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AMERICAN  
DEMOCRACY  
TODAY



# American Democracy Today

AND OTHER ESSAYS ON POLITICS  
AND GOVERNMENT

By

WILLIAM STARR MYERS, Ph.D.

PROFESSOR OF POLITICS IN PRINCETON UNIVERSITY



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TO MY WIFE

*whose inspiration and help caused  
the writing of this book*



## PREFACE

ONE of the greatest necessities in American life today is that there be an increase in the interest of our citizens in the problems of government and administration. The recent doubling of our potential electorate by the adoption of the Nineteenth Amendment, added to the former annual increment of voters, has made this necessity of even greater importance. As the result of some years of teaching and public lecturing on such problems I have been led to believe in the importance of the discussion of fundamental principles of political science in the light of their present-day application. This frequently is the best avenue of approach to the subject if the interest of the people is to be aroused. Once this is accomplished, further reading, study and reflection are almost certain to follow. It is with these objects in view that the following brief essays have been written. They are somewhat elementary in form in order to serve as an introduction or handbook to further reading. I am now engaged in the preparation of a book dealing more extensively with the subject-matter of the essay on Presidential Leadership.

The first chapter, upon present-day democracy, originally appeared in part in *The New York Herald*. By the kind permission of the editor I am enabled herewith to republish it. The viewpoints advanced in the essays upon the courts and state governments have been

## Preface

discussed by me during the past year in editorial articles contributed from time to time to *The New York Journal of Commerce*. My grateful thanks also are due my kinsman, Mr. Walter D. Starr of the staff of the Princeton University Library, for undergoing the task of reading and criticising the manuscript.

WILLIAM STARR MYERS

*Princeton New Jersey*  
*November 24, 1923*



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## AMERICAN DEMOCRACY TODAY

A FAR too common experience for those citizens of New York who attempt to come uptown at the "rush hour" on the subway is to try to get off, perhaps, at Fourteenth street and possibly succeed at Grand Central. The mere sight of the pushing, shoving crowd of human cattle, for that is what they are, is enough to make any person despair of the future of this country. But a closer look at the faces and actions of these same individuals shows that they are not American and do not know what America is, or that for which it stands. Their idea is that democracy means, to quote the reputed saying of Meredith Nicholson, "I am as good as you are," and they are proceeding to show it. On the other hand, the idea underlying that type of democracy in which America believes is that "you are as good as I am," and that I must exercise the consequent self-control and give you a "square deal." Putting it another way, American democracy does not mean license, but freedom within the law. It means a self-restrained democracy, and that I should feel the responsibility of a political and social citizenship and so restrain myself that I give you an equal chance with me.

Furthermore, a glance over the names of the members of the Socialist party and its leaders shows an over-

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whelming preponderance of individuals who are foreign born or of immediate foreign ancestry, and that ancestry of continental European rather than British origin. It is a well known fact that socialism never has appealed to the rank and file of the people of the United States, Great Britain or the self-governing commonwealths of the British Empire.

These countries are all built up on the principles of the English common law, which stresses individual rights and responsibilities, while the countries of continental Europe are based upon a totally different idea. To the citizens of these latter the state exists of itself separate and apart from the people. It gives liberty and individual rights to its people. But in countries of Anglo-Saxon institutions the government comes up from the people, and is merely an added protection to the inherent, inborn, "primordial" rights, as Francis Lieber called them, which the people already have.

Thus it is not surprising that our foreign-born population fails to appreciate the fact that America does not stand for equality of condition, for that is impossible, but for the ideal of equality of opportunity for each individual to work out his or her own salvation in the economic, social and political, as well as in the spiritual or mental spheres. This again throws the responsibility back upon the individual, to take advantage of these opportunities. While we believe in social legislation, we do not believe in socialistic legislation. The former is predicated upon helping people to help themselves, in order to give them an equal opportunity. Socialism

helps people in spite of themselves, and thus pauperizes them. Foreigners are more likely to be socialists because they expect the state to give them economic and other happiness, along with the liberty for which our Government stands. Our people of American stock know that it is impossible to make people happy by law, for happiness comes from within. The Declaration of Independence declared the individual's right to life, liberty and the *pursuit*, not gift, of happiness.

According to the reports of the United States Commissioner of Immigration this country has admitted a total of 35,267,807 alien immigrants in the years 1820 to 1923 inclusive. Moreover, since 1895 there has been a shift in the source of immigrants from northern and western to southern and eastern Europe. Thus in the year 1914, immediately preceding the war, we admitted 1,218,480 foreigners, of whom about 817,550 were from Austria-Hungary, Italy and Russia, and over 331,000 illiterate. This means that in one year we admitted a number of illiterates almost equal to the then population of our capital city, Washington, D.C.

The results of the intelligence and other examinations given by army and other authorities during the war have caused a new and more recent consideration of the mental ability of our people. While the mistake has been made of resting conclusions exclusively on the army tests, yet a comparison of the opinions of psychologists, biologists, social workers, students of penology, charity organization workers, physicians, educators, insurance experts, etc., shows a very clear common

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denominator of their views. I give this not as absolutely correct from the mathematical standpoint, but as showing unmistakably the common conclusions to be drawn from their opinions.

According to this calculation, and taking the total population of continental United States as 105,000,000, it appears that there are 45,000,000 people of subnormal intelligence who will never pass beyond the possible mental ability of the normal child of fourteen years of age. Worse than this, there are 15,000,000 feeble minded, or those below eight years in intelligence. This makes 60,000,000 altogether of subnormal or feeble-minded intelligence but the serious aspect is much reduced by the age factor in the case of the children. In the other direction there are about 5,000,000 people of first class ability, and 15,000,000 of the second class, that is to say, of those whose ability is good but not of the finest type of mind. This leaves 25,000,000 in class C, or those whose ability is mediocre. And no great industry ever was organized, or railroad built, or profession successfully practiced by any person of mediocre ability. Therefore we must look to the 20,000,000, or one out of five in our population, for the brain power successfully to run this country.

Professor Carl C. Brigham of Princeton University, in a recent and noteworthy study of the facts of American intelligence, lays down the sound thesis that if human intelligence counts for anything in competition, it is only natural to expect that persons of superior intelligence will adjust themselves more easily to their physic-

al and social environment, and "that they will endow their children not only with material goods, but with the ability to adjust themselves to the same or a more complex environment. To select individuals who have fallen behind in the struggle to adjust themselves to the civilization their race has built as typical of that race is an error, for their position itself shows that they are, for the most part, individuals with an inferior hereditary environment." He then goes on to state that there can be "no doubt that recent history has shown a movement of inferior peoples or inferior representatives of peoples to this country." Few of our citizens realize the extent of this movement or the rapidity with which it has taken place. "Since the year 1901, or just about the period of a single generation, it may be concluded that about 10,000,000 Alpine and Mediterranean types of immigrants have come to the United States. Allowing for the return of one-third or three-eighths of these, and using our army estimates of intellectual ability, this would give us over 2,000,000 immigrants below the average American negro" during a period of about twenty years, to swell the army of our population of lower ability.

Dr. Brigham gives it as his mature conclusion, after careful study of the facts in the case, that "according to all evidence available . . . American intelligence is declining, and will proceed with an accelerating rate as the racial admixture becomes more and more extensive. The decline of American intelligence will be more rapid than the decline of the intelligence of European nation-

al groups, owing to the presence here of the negro. These are the plain, if somewhat ugly facts."<sup>1</sup>

During almost all of the years of our history, the American people have made no real effort to test the intelligence, or even the sanity, of the immigrants that have come to our shores. The large proportions of the foreign-born who are patients in our hospitals for the insane and inmates of our almshouses and institutions for the care of the delinquent, are ample proof of the extreme recklessness and the tragic and menacing results of this national policy, or lack of one.

But this is not the worst, according to the views of others among our soundest and most scholarly investigators. Thus Dr. Stewart Paton, the authority upon

<sup>1</sup> *A Study of American Intelligence*, pp. 194, 204-5, 210. See an article by Albert Edward Wiggam, "The New Decalogue of Science," *Century Magazine*, March 1922. Says Mr. Wiggam,—“You believe that the reason one man starts at the bottom of the ladder and climbs up while the other man starts at the top and slides down is due to the ladder being wrong end up. Science knows it is due to the inborn difference between the climber and the slider.” The best brief discussion of the army tests is contained in an article by Dr. Robert M. Yerkes in *The Atlantic Monthly*, March 1923, entitled, “Testing the Human Mind.” The ablest discussion of the biological basis of this whole problem is to be found in *Heredity and Environment*, by Professor Edwin Grant Conklin. See also *Is America Safe for Democracy?*, by William McDougall. The pregnant suggestion has been made that intelligence tests of the children in our public schools should be required by law. A person actively engaged in the advertising business has told me that his firm recently made the estimate, as the result of a wide canvass, that only approximately sixty-five per cent of the American people are intellectually capable of being influenced by any form of approach through advertising methods.



psychiatry, maintains that a conservative estimate of the total number of persons in the United States who are subjects of some definite mental disturbance requiring expert medical advice and treatment amounts in numbers to at least twice as many as there are patients in hospitals. This means that in the year 1920, instead of there being, as given in official statistics, 220.1 people for each 100,000 of the population, the ratio amounts to 660.3 of those who in their present environment are not successful in making rational adjustments in living. These persons, according to Dr. Paton, are suffering from definite and easily recognizable forms of mental disturbance. Furthermore, the feeble-minded, as well as the psycho-neurotic, are not included by him in these statistics.

Dr. Paton maintains, and rightly, that the high rate of incidence of insanity is indeed serious, although no very definite ideas can as yet be formed as to the actual rate of increase. "The apparent increase is due in large measure to improved methods of diagnosis and the development by physicians, since 1914, of more intelligent interest in the study of modern psychiatry. Before the war, relatively few physicians paid very much attention to the investigation of mental disorders. Recently the medical profession has awakened to the appreciation of the fact that in their high rate of incidence, insidious methods of development and demoralizing effects upon mankind, mental disorders are a far

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greater menace to civilization than all the physical diseases combined.”<sup>2</sup>

When one remembers the source and class from which most of our recent immigrants have come, also their actual mental ability and literacy, it easily can be seen that we are at present face to face not alone with the necessity of Americanizing them but of preventing them from de-Americanizing us. Foreigners are swamping America and American institutions. Some cities are nearly 95 per cent foreign. Furthermore, the foreign born are voting in blocs. Recent elections in New York City with their enormous swing from one party to another have largely been on racial lines. Mayor Hylan was elected by Italian, Irish, German and other foreign blocs. This is running true to the factional type of politics in Continental Europe and politically backward parts of the world. These have not yet advanced to the two party system which President Lowell calls the sign of political maturity, and which is so characteristic of people like the Americans, who have fundamentally British institutions.

It might be remarked here in this connection that

<sup>2</sup> See the letter to *The New York Sun*, May 17, 1923. *The New York Times* in its issues for May 6, 1922 and April 9, 1923 stated that psychiatric tests of 100 arrivals at the State Reformatory for Women at Bedford, N.Y., showed the average mental age to be ten years. An examination of 250 male prisoners at Sing Sing showed their average mental age to be thirteen years, two months. It is also a matter of interest, if not of significance, that of 1,457 prisoners admitted to Sing Sing in the year 1922, there were no professional men. On the other hand, this is the first time in years that the professions were not represented among those admitted.

there is no more characteristically British document in the world than the Constitution of the United States. It is true that Professor Claude H. Van Tyne estimates that during the century preceding the Declaration of Independence there had poured into the Thirteen Colonies hundreds of thousands of Germans and Scotch-Irish, many thousands of French Huguenots and Dutch, until fully two-fifths of America's white population were of other than English extraction.<sup>3</sup> But, on the other hand, the heavy majority of people whose leadership counted most in the establishment of social and political institutions, were essentially British and, to quote the same authority again, "America was to lead in the struggle to establish, at least in the Anglo-Saxon world, a government of law and not of men, of written basic law and not of men raised by their fellows to a little brief authority."<sup>4</sup>

No wonder our recent immigrants do not thoroughly understand the Constitution or the institutions of this country, but attempt to introduce the paternalism of continental Europe. Senator La Follette, who poses as the leader of a radical agrarian movement, draws his main personal support from a large German socialist element in Wisconsin which showed its true character during the war, and never has been really Americanized. "Even the Non-partisan League may not be hailed, though some would so have it, as a product of an indigenous American Socialism, for this organiza-

<sup>3</sup> *Causes of the War of Independence*, p. 345.

<sup>4</sup> *Ibid*, p. 232.

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tion originated and has enjoyed its most spectacular success in a western commonwealth in which 70 per cent of the people were natives of Europe or are the children of foreign-born parents.”<sup>5</sup> It is fear of the hyphenates and other un-American elements in our life that has caused the organization of the Ku Klux Klan, itself based upon a mistaken understanding of all that for which America really stands, as mentioned above.

It seems that the great and prime necessity at present is a policy of rigid restriction of immigration. The present law is badly formulated and administered in some of its provisions, but it is on essentially sound principles. I know the counter arguments of different elements of people, especially of our business men: that we are now suffering under a shortage of unskilled labor, and also playing into the hands of the autocratic labor leaders, so many of whom are themselves foreign born. My answer is that it would be far better even to reduce our prosperity and restrain the economic development of this country, if that be necessary, in order that we preserve our American characteristics. For what would it profit this country to gain the whole economic world and lose its American soul?

Of course no one will deny for a moment the great contributions that our foreign born citizens have made to American life and progress, spiritual as well as material. A century and a half ago, the Scotch-Irish immigrants who more recently had come to this country from the north of Ireland, formed the back-bone of many of

<sup>5</sup> A. M. Schlesinger, *New Viewpoints in American History*; p. 18.

the regiments that gained the most outstanding victories in the American Revolution. Professor Charles E. Merriam calls attention to the fact that during the nineteenth century the German and Irish immigrants were intense Unionists, and expresses it as his opinion that without them it is doubtful whether or not the Union could have been preserved.<sup>6</sup> Increasingly, during more recent years, the material might, the economic prosperity and the works of art or usefulness of which Americans are most justly proud, have been reared in large part by means of the bended back, the tense muscles and the sweaty brow of the "unskilled laborer" from across the Atlantic Ocean. This should never be forgotten, no matter what may be our feelings aroused by the great problem of unassimilated aliens in the country today. It would seem to be the part of gratitude that, while we may restrict for the present at least the numbers of those who may come in addition, yet we make special effort to see that a "square deal" be given to those already here. This would consist in efforts to hasten their Americanization and especially to prevent their being herded together in "foreign sections" of our cities, where they are deprived of the opportunity to get into touch with, much less enjoy the benefits of, the American life and freedom for which they originally left their native homes.

On the other hand, it would be difficult to find a better statement of what the United States has the right to expect from its immigrants than that made by the late

<sup>6</sup> *American Party System*, p. 182.

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Charles J. Bonaparte of Maryland in the course of an address at the University of Notre Dame, at Notre Dame, Indiana, in the year 1903. Said he,—“America is the home of exiles of many races, climes, tongues, and creeds; all kinds and conditions of men are welcome here, and out of all have been made, are daily made, good Americans. But to become Americans, in the sense which makes them verily and indeed our brethren, they must cease to be something else; they must have left their old homes forever, and in these all prejudices or passions, all enmities and quarrels which might make them forget, even for a moment, that they are Americans, and Americans only.”

If more of them were like Alexander Hamilton, James Wilson and Albert Gallatin, or like Carl Schurz, Hans Kudlich, Jacob H. Schiff and Franklin K. Lane of a more recent day, we should have little to say in opposition to immigration. But the difficulty is that foreigners have come to our shores faster than we have been able to assimilate them. Furthermore, as somewhat extremely stated by Judge A. T. Clearwater, we are building up from both native and foreign stocks a class of “proletarians,” which will result in the undermining of the political and industrial institutions upon which the United States is built. He explains that by proletarian he means “the man who has no property, who has not the industry, frugality and self-denial to accumulate property; a man who will breed children and who

<sup>1</sup> Quoted in J. B. Bishop, *Charles Joseph Bonaparte, his Life and Public Services*, pp. 242-3.

will throw himself without scruple or reserve upon a community for support. That is the proletarian, and that is the proletarian class, that is growing up in our seaboard states, and in no city greater than this imperial city of New York.”<sup>8</sup>

The so-called “labor problem,” and its connection with restricted immigration as mentioned above, is one apart from the present issues, and should be met and solved by the American people as such. The American laboring man is sound and level-headed and can be relied upon for his loyalty to American principles. The trouble is that he is badly led, and his influence in the unions often is swamped by the foreign membership of radical tendencies. He cannot develop the unions and their legitimate influence until they become really democratic, instead of autocratic in organization. That unions are not only legitimate, but necessary for the protection and advancement of the laboring man no fair-minded person will deny, but they should be incorporated and their organizations brought under government supervision and also be made legally responsible for the powers they exercise. It must be remembered that irresponsible power is the antithesis of the American principle of individual, as developed into corporate, responsibility.

In the second place, we should have a rigid restriction of the suffrage. Many people opposed the woman’s suffrage movement not because they cared a snap of their

<sup>8</sup> See *New York State Constitutional Convention*, 1915. Record, Vol. II, p. 1833.

fingers whether women voted or not, but because what they desired was to disfranchise a lot of ignorant men before they gave the ballot to intelligent women. They believed that it does not matter whether a voter is a man or woman, so long as the voter is intelligent. And so far as we know, the best restriction is an educational one. This remains true, in spite of the fact so well stressed by the late Lord Bryce in his monumental work on "Modern Democracies"<sup>9</sup> that education and political ability are not by any means synonymous terms. "The maxim that the voter must have instruction fitting him to use his power [has become] a commonplace; and the advocates of democracy passed unconsciously, by a natural if not a logical transition, from the proposition that education is a necessary preparation for the discharge of civic functions to the proposition that it is a sufficient preparation." Lord Bryce dryly remarks that at the present day reading has become a substitute for thinking. But he goes on to say, that in the modern civilized countries, where schools and other educational institutions of various kinds abound, "ignorance of letters is *prima facie* evidence of a backwardness which puts a man at a disadvantage, not only for rising in the world, but for exercising civic rights, since in such countries nearly all knowledge comes, not by talk, but from the printed page."

Therefore, every voter should be required to read, write and speak the English language. Furthermore, a much longer period should be required for naturaliza-

<sup>9</sup> Volume I, pp. 70-2.



tion, with the passing of a civil service examination (in English) upon the government, history, geography, and elements of the economic resources of this country. When once this system of examinations is developed into smooth running order, it then could be extended to all men and women 21 years of age, whether native born or not, who desire to become voters. The matter of the requirement of an ability to read and write the English language is one of special importance. The old and valid argument for a study and thorough knowledge of foreign languages, both classic and modern, which advances beyond the benefits derived from the mental discipline involved in their thorough mastery, is based upon the fact that the spirit of a literature in a foreign tongue, in addition to the shades of meaning, cannot be adequately apprehended or appreciated, or only with great difficulty, by means of a translation. This applies directly to the foreigner who, although he or she may be highly educated (which is not often the case), must be dependent upon foreign language newspapers published here, or upon books and speeches, political and otherwise, in a foreign tongue for an understanding of our Constitution, laws and institutions. These latter can best, if not only, be apprehended in the language in which they were written and promulgated, or were formed. Furthermore, the individual who is too lazy or incompetent to make the mental effort necessary for learning the language of this country, is too lazy and incompetent to be fit to become a citizen of the United States, and take a share in its government.

There is still another side to this matter of naturalization to which insufficient attention has hitherto been given. Professor Merriam has seen this when he urges that the cooperation of the different races who compose our body of immigrant citizens is inevitably a very difficult problem from the economic, the social, or the political point of view. "It is, of course, inevitable that the formation of a common political consciousness and of a common agreement upon questions of public policy should be more difficult in proportion as the population is more diverse and easier in proportion as it is more homogeneous." It "tends to prevent or delay the formation of the necessary 'common understandings' upon which all successful government rests in the last analysis." This is because "each race brings its own standards, customs and ideals and these must first be blended before a common understanding in regard to common matters can be reached. In the meantime, appeals to race pride and race prejudice will be made with more or less success by various interests, selfish or unselfish as the case may be, and in this way the day of reaching a common understanding will be so much delayed. This does not involve any reflection upon any particular race, but is merely the statement of the simple fact that it takes time for strangers to reach a common understanding."<sup>10</sup>

Good illustrations of this appeal to ignorant and narrow radical prejudice among unassimilated foreigners may be seen in the silly attacks made upon the textbooks and other historical works of men of such out-

<sup>10</sup> *American Party System*, pp. 181-2; *American Political Ideas*, p. 31.

standing scholarship as McLaughlin, Van Tyne, Mussey and others, upon the ground of their alleged "pro-British sympathies," by ignorant and untrained officials of the Hyland Administration in New York City, and by members of the legislatures of the states of New York and Wisconsin as referred to later. Also upon such an issue as the ratification by the United States of the League of Nations, the foreign-born elements among our voters, especially in such states as Massachusetts, New York and Wisconsin, professedly cast their vote in the campaign of 1920 upon the basis of Old World prejudices, rather than upon that of American interests.

To cite a more sobering illustration, attention may be called to the presidential election of 1864. In that year, Lincoln was running for reelection upon issues that virtually meant the continued existence, or the destruction of the unity, of the country. An analysis of the election returns of that year will show that the mere change of some 50,000 votes, in certain doubtful or strategic states, would have meant the defeat of Lincoln and the election of McClellan. The latter, although thoroughly honest and patriotic to the core, was enmeshed in the chains of factious opposition to the conduct of the war and to emancipation, and in those of "Copperheadism" and selfish partizanship on the part of certain sinister interests who would have wrecked him and the cause of the Union, as inevitably as the defeat of Lincoln would have been a calamity for the cause of world democracy. Yet in that same year of 1864, in the two or three months before the election, twenty-five thousand for-

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ign-born residents of New York City were naturalized. Also in that same year alone 1200 were admitted to citizenship in Brooklyn, 2500 in Boston, and 980 in San Francisco. If the years 1860 to 1865 inclusive were taken, the total of naturalizations would reach an astounding total. And these new citizens were permitted, in spite of the fact that many of them, by means of fraud and falsification of records, had not been here the statutory time for length of residence, to vote upon the destiny of the United States.<sup>11</sup>

Finally, what America needs above anything else is leadership. No country, much less a democracy, can succeed without it. In other words, each government must be *led* by an aristocracy. By this I do not mean an aristocracy of blood, of wealth, or social position—these are merely advantages rather than qualities—but by an aristocracy of achievement. And this achievement must be in the spiritual and moral sense as well as the intellectual. I do not believe, as is advocated by some people, that we should confine our educational advantages only to the small classes of those fully competent according to the above analysis. This would involve a rigid system of tests, with the power of choosing or discarding according to some external standard of intellectual abil-

<sup>11</sup> See E. D. Fite, *Social and Industrial Conditions during the Civil War*, pp. 192-3. Among Lincoln's popular majorities in 1864 were the following: Connecticut, 2,405; Illinois, 31,138; Indiana, 20,189; Maryland, 7,414; New Hampshire, 3,561; New York, 6,740; Oregon, 431; Pennsylvania, 20,081. The total Republican majorities in these eight states were 91,959, and their total of electoral votes 109, or three more than one-half of the 212 cast for Lincoln and Johnson. See E. Stanwood, *History of the Presidency*, p. 307.

ity, and placed in the hands of autocratic officials. If opportunity for education is put within the reach of all the success or failure of the individual would be primarily a self-imposed process and almost automatic in its essential working.

It behooves those of our citizens who have the advantages of opportunity and position to realize their responsibility. Every boy and girl in school and college should be taught the duty of going into politics not to get something out of it but to put something into it. And this something is personal service, for the sacrifices of peace are just as real, although different in kind, as the sacrifices of war. Both American citizenship and American suffrage—and they are not by any means synonymous terms—should be made valuable by being made something to strive for. It is human nature to value lightly that which is easily gotten. “Easy come is easy go.” This country, long too easy going in a careless, indolent way, must set a value upon itself and give its rights and privileges only to those who are capable of using and not misusing them.



## CERTAIN CONTEMPORARY DANGERS

WHEN the "Fathers" of our Constitution met in Philadelphia to form a more perfect Union, they had before them a practical problem. And being practical men they solved it in a practical way. This problem was to unite into some form of workable government the people of thirteen separate and practically independent states, independent of each other as well as of their former British rulers. These men worked with the tools they had, and formed a Constitution which was of such a type that, while the local power and self-direction of the separate states were secured, yet in all matters of foreign affairs, and of common concern in the domestic field, the direction and control were placed in the hands of the officials of a new and national government.

In appearance, at least at the beginning, the powers of the separate states seemed little impaired. In reality, a Constitution was written and a federal government was created of such a form that when the people adopted the new proposal, they killed the sovereignty of the separate states and legally reduced them to mere administrative districts of the nation. Stating this in another way it may be said that sovereign powers were in great part left to the states, but sovereignty was placed

in the people of the United States as such. It is the fundamental difference between principal and an agent. In this respect it is neither logically nor grammatically correct to say that "the United States *are* a nation" but that "the United States *is* a nation."

Of course if the people of the newly established nation had been aware of the fact that by the adoption of the new Constitution they were destroying the old states as separate and individual entities, it is almost certain that they never would have ratified the proposed document. But this latter was such in form and implication, that when once it was formally accepted and put into effect, it was only a matter of time until its true nature should be developed and later understood by the people at large. This understanding was of gradual growth, and the new and logical results were not actually realized until after the close of the Civil War, for it cost this terrible and bitter struggle to settle the controversy in the one and only logical way. Furthermore the contest was not a "War between the States" as often erroneously designated in the South, but an armed rebellion.

It is generally accepted by students of politics and history today, that the old controversy over "state's rights" is only of academic or historical interest, when viewed from the legal or theoretical standpoint. Yet when it comes to a question of practical expediency, as to how far the federal or state governments should exercise an effective and exclusive control over various fields of activity, in touching the lives of the individual citizens, the problem assumes an entirely different char-



after from that of its older form. Putting it the other way,—is the present well-marked and unmistakable tendency toward the centralization of power and responsibility in the hands of the national government a sound and healthy development?

It is probable that the early Fathers builded better than they knew. They made a federation because it was the only practical way to unite our widely separated people into one nation. Yet it is also probable that one of the great secrets of our success as a self-governing country has been due to this same federal type of government. No matter how united our people may be socially, economically, culturally and spiritually, there always will be certain specific differences among them. Conditions never can, for reasons of geography and environment, be the same in Maine and Florida, or Minnesota, Louisiana and California. While the main burden inevitably must more and more be recognized as bearing upon our national government on the one hand, and our country, city or other local government on the other, yet we always shall need the state organizations to carry the load of administration that is too much localized for the national, and too large for the minutely local administration. Such matters as education, wages, sanitation, and various sumptuary laws, to mention only a few subjects, will long be better handled and with more intelligent understanding by the states than from Washington, D. C.

And the causes of this rapid growth of centralization are not entirely those of the unification of our social

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and economic life, due to the growth of means of communication, business, industry, finance, education, etc. Elihu Root was one of the first to see another reason, and this is the incapacity and inefficiency in many of our state governments. Mr. Root, then occupying the office of Secretary of State in President Roosevelt's cabinet, in an address before the Pennsylvania Society of New York City on December 12, 1906, spoke as follows:

"The intervention of the National Government in many of the matters which it has recently undertaken would have been wholly unnecessary if the States themselves had been alive to their duty toward the general body of the country. It is useless for the advocates of State rights to inveigh against the supremacy of the constitutional laws of the United States or against the extension of National authority in the fields of necessary control where the States themselves fail in performance of their duty. The instinct for self-government among the people of the United States is too strong to permit them long to respect any one's right to exercise a power which he fails to exercise. The Governmental control which they deem just and necessary they will have. It may be that such control would better be exercised in particular instances by the governments of the States, but the people will have the control they need either from the States or from the National Government; and if the States fail to furnish it in due measure, sooner or later constructions of the Constitution will be found to

vest the power where it will be exercised—in the National Government.”<sup>1</sup>

Of course, as so often happens, Mr. Root was widely attacked by press and platform for advocating exactly the opposite thing. He was explaining the centralization, and urging the reinvigorating of our state governments, not necessarily favoring the continuation of the tendency. And Mr. Root was speaking better than he knew. The enormous growth in federal power now has become almost a menace to self-government, which must be kept as close as possible to the people, if it is to remain strong, vigorous, and lasting. This centralization has not by any means been the result of the recent war. That merely hastened the pace, for the legislation of the early years of the Wilson administration was marked by the use of national power by the Federal government to an extent hitherto unheard of in times of peace, and that by the hand of the Democratic party, hitherto considered the main bulwark of defense for the theory and practice of state's rights and local government.

There is still another reason for this increase of centralization which is not always perceived by our people at large, and that reason is our present faulty system of taxation, leading to the most unfair duplication and reduplication of tax levies at the hands of national and state governments or by the smaller administrative di-

<sup>1</sup> *Addresses on Government and Citizenship* (edited by Bacon and Scott), pp. 369-70.

visions created by state authority. When the Sixteenth Amendment to the United States Constitution was adopted in the year 1913, our people made one of the greatest mistakes in their history. This amendment rightfully empowered the national government to "lay and collect taxes on incomes, from whatever source derived," and was a proper and necessary extension of federal power. Personally, I believe in the justice and expediency of an income tax and a progressive one at that, if fairly and properly levied, although the policy of our national legislators at the present time is anything but characteristic of these qualities. Theoretically an income tax is exquisitely easy of levy and collection, but practically it is the most difficult of all from the standpoint of justice in amount and in incidence. Our present system violates all canons of excellence, and the avowed purpose of its ignorant and narrow authors and perpetrators was class and sectional. But this is another problem from that of centralization, and the mistake mentioned above consisted in the failure to include in the Sixteenth Amendment a provision prohibiting any state from levying an income or any other tax where the power is concurrent, unless in the absence of such legislation on the part of the federal government.

Thus the state of New York now levies an income tax of its own, and not content with taxing its own citizens, in a measure certainly unfair and unconstitutional from the standpoint of the Constitution of the United States, levies upon the incomes originating in New York state of citizens of New Jersey, Connecticut and other states.

These latter citizens not only pay income and other duplicate taxes to the national government, but also in some cases to several other states as well. This is "taxation without representation" carried to an extreme never dreamed of by the American Revolutionary patriots, we may be assured. I also know of a case where a resident of Cleveland, Ohio, had to pay five different taxes upon a small inheritance from a relative living in the state of Rhode Island.

The present faulty and unfair system of taxation, or lack of it, is driving many of our hard-working, industrious and law-abiding citizens to desperation. As is usually the case, it takes a long time for popular anger to be fully aroused, but when it is brought to the breaking point, the people will start out literally to "smash" something, and that something probably will be the states. Since the individual citizen can have some slight share and influence in the conduct or control of the national government, but none whatever in those other states than his own which unjustly are taxing him, he naturally will turn to the former, and it is probable that in the rather near future the states will begin to lose their powers of taxation. A beginning of this is seen in the proposed amendment, now before Congress and the people, prohibiting the further issue of tax-exempt securities by states and political divisions deriving their authority from the states. It is my own opinion that the Sixteenth Amendment already by direct implication permits the national government to tax these latter securities, but most fortunately the interpretation hitherto

put upon it has been otherwise. I do not oppose the proposed amendment because I believe in the tax exempt securities, because I do not, but am heartily in sympathy with the desire to end them. But the way to accomplish this is by ending the economic and financial reasons that have produced them. In other words, our faulty and unsound system of penalizing wealth and the possession of property has driven capital out of productive industry into tax exempt securities, often issued by the states and local governments for no sound reasons, except the cheapness of interest and the facility of floating the bonds, which lead to extravagant and unjustified expenditure of public funds for works of doubtful expediency or propriety. The way to end the "tax exempts" is completely to revise our income and other levies, and then capital automatically will flow into productive enterprise.

After all, the danger to our institutions is not only economic but political. The worst feature of the proposed amendment is that it will virtually place in the hands of Congress the power to wipe away the last vestige of sovereign or original power still remaining in the hands of the states. There is little doubt that Congress having the power will use it. It is hardly an exaggeration to say that, legally at least, we will cease to be a federation, and become an unitary government. Do we wish to pay the price that inevitably must accompany this fundamental departure from American institutions?

In the last revised edition of his monumental work on the "Law of the Constitution,"<sup>2</sup> the late Albert Venn

<sup>2</sup> Edition of 1915, p. lxxxvii.

Dacey pointed out the difficulties inherent in a solution of the question of Irish Home Rule due to its derogation from the power of the legally centralized government at Westminster. And yet many of the leading statesmen and thinkers of Great Britain favor the introduction of federalism as the only solution of the difficulties not only of the British Kingdom, but also of the Empire itself. Furthermore, it is reported that Clemenceau, before relinquishing the premiership some four years ago, pointed out the fact that in his opinion the great future problem of France would be that of decentralization into some form of federalism or other means of extension of local self-government. Whether real or apocryphal, this story illustrates the great difficulty in which the French people now struggle, having an inconsistent government, in that it is democratic at the top, and autocratic at the base. It is very near the truth to say that while the British and French people are struggling away from centralization and unitary government into federalism we are going headlong and blindly in the opposite direction.

There is still another dangerous tendency that is unperceived, or at least unappreciated by many, and that is the growth of class legislation. If the "Fathers," driven by practical necessities, builded better than they knew in forming our federal government, there is yet one thing equally valuable which they undertook with sure knowledge and also wise instinct and intelligence. That was, the endeavor to create a nation in which artificial class privileges and distinctions should be unknown to law.

This could not be realized at once, but at least a beginning was made in prohibiting titles of nobility, a national church establishment, and granting those fundamental rights summed up in the United States Constitution and the Bills of Rights of the various states. Primogeniture, entailed estates, property qualifications for the suffrage, state establishments of religion, and other instances of class favoritism gradually disappeared in the separate states as well, until real democracy had its triumph in the period of Jacksonian Democracy and Lincoln Republicanism. The fruition of this movement may have had unfortunate accompaniments, from the direct effects of which we suffer at the present day, but at bottom it was in accordance with a sound American instinct, and undoubtedly was the logical and practical realization of the best of the ideals incorporated in the movement leading to the Declaration of Independence.

But, as shown above, beginning about the year 1820 there came an enormous immigration of foreigners into the United States reaching the total of about 35,000,000 people in the century or more since that time. The effects of this movement of population have been discussed in this volume, but there is still another result that has not yet been mentioned. It should be remembered that of all these immigrants, perhaps 95 per cent at the least estimate came from countries in which class privileges and distinctions not only prevailed, but were, and in many cases still are, looked upon as a normal and a proper element in society and government. In other words, while many of them thoroughly understood and absorbed



American ideas and ideals of equality of all people in the eyes of the law and in opportunity for personal happiness and advancement, yet unconsciously the major part of them brought with them their class consciousness, and to a greater or less extent have acted upon it. Especially of late is it seen that only too many of our foreign-born seem to think that having left those countries in which they were of the unfortunate classes, they now are free to become a favored class in the United States, and that our country is on a class basis, as are all other nations, only the new-comers have the opportunity as a class to rise from the bottom to the top, with all the unfair and undeserved influence, opportunities and advantages that accompany this new position.

This fact possibly goes far to explain the activities of so many of the "blocs" in Congress and elsewhere in our national life, who loudly are advocating special legislation from a frank standpoint of class selfishness. It also may be at the bottom of the contemporary movement for state and national "bonuses" to ex-soldiers of the late war, one of the most unhealthy developments in our national life during all the course of our history. To legislate money out of the pockets of taxpayers into the pockets of able-bodied men is essentially undemocratic, besides putting patriotism upon a materialistic basis,—and then it may not be patriotism at all.

It should be remembered above all, that class and democracy are mutually exclusive terms. A democracy knows no class, and the democratic character of a country is diminished in exact proportion as class legislation

is passed or a government is administered upon a class basis. This applies equally to laws favoring capitalism, bourgeoisie or proletariat, and is as true of Soviet Russia as of Czarist Russia, for in both cases we have class raised to the “nth power” and become the frank basis of political organization.

### III

## THE CONSTITUTION AND THE PEOPLE

IT was Walter Bagehot who, more than sixty years ago, pointed out the fact<sup>1</sup> that all modern governments may be said to be composed of two parts,—a dignified and an efficient. The dignified part impresses the people, the efficient part in reality does the work of governing or of administration. To put it in a different way, the dignified, or theatrical part excites and preserves popular respect and reverence. It gains authority and attracts motive power. The efficient part uses the authority and employs the power. Of course it may easily be seen that in the British government, which Bagehot was describing, the king is the head of the theatrical, and the prime minister is the head of the efficient or working parts respectively.

Certainly in Bagehot's day, and before the growth of power and consequent interest and information among the rank and file of the people, the average "man on the street" would be apt to reply to an inquiry that he obeyed the law because it was the king's (or queen's) law, and because he was the king's loyal subject. He did not realize that in all probability the king had little or nothing to do with the formulation or passage of the act in question, but that the latter was the work of parliament,

<sup>1</sup> *The English Constitution* (revised edition), pp. 72-80.

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under the guidance and leadership of the prime minister and cabinet. The law may even have been passed upon and signed by the king, much to his own regret and disgust, and this because he was and is a mere figurehead and must follow the "advice" of the premier on all important subjects. Nevertheless, it likewise holds true today, and the monarch continues to influence, and not govern, although that influence is a veritable balance-wheel in the administration of the affairs, social and political, of the United Kingdom.

Any one who has witnessed or read the press accounts of the coronation of a British monarch, or even of the more often repeated and common spectacle of a royal wedding, funeral, or the progress of the king and queen through the streets of one of the British cities, can appreciate the fact that the British monarchs are among the most accomplished stage managers in the world. And the late King Edward VII was one of the greatest of them all. It is not without significance that monarchy is therefore perhaps stronger in Great Britain at the present time, or during the past thirty years, than at any moment in modern history. Even among the most extreme radical or socialist elements in British politics, one seldom hears any questioning of loyalty to the crown, or the expediency of its continuation as a part of the Constitution and government. Its practical utility is established.

The shrewd and acute analysis made by Bagehot is just as true of a democracy as of an aristocracy or any other kind of government, and is as vital in a republic

as in a monarchy. It would be folly even to suggest such a thing as the establishment of a monarchy in the United States. We do not want one, neither do we need one. But it is interesting to note that some of the soundest and most patriotic of the Fathers of our Constitution long doubted the wisdom of our establishing a republic, and felt that perhaps it would be necessary for us to come to a monarchical form after all. They saw, with unerring vision, the need for the theatrical part of a government, and hardly could have been expected also to foresee the development that actually occurred, which has given us an object of reverence and yet preserved us from the extreme pomp and expense of royal show, with the almost necessary class accompaniments.

President Lowell of Harvard, some years ago, stated<sup>2</sup> that we had found or rather developed a substitute for a king, as an object of reverence, and that this was the Constitution of the United States. This statement is just as true today, as some thirty-five years ago when he wrote it. The British people reverence and almost worship their king, a sort of living flag. The American people likewise have the same feeling for a document which is looked upon as almost perfect in form and infallible in its workings. This reverence was a gradual, though rather speedy growth for all that, and came from a dawning and increasing sense of appreciation of success both in theory and actual working. It is true that reverence for a document requires a greater effort of intelligence than that for a person, but we always have prided our-

<sup>2</sup> *Essays on Government*, p. 126.

selves upon the political knowledge and capacity of our people, and with a continued and justified increase in that confidence,—until the problem of the unassimilated and inexperienced alien arose to dog our footsteps.

It is probable that reverence for the Constitution is just as important as ever. It is not a perfect document, nor is it above all criticism or change. But we should remember that it was formulated as a practical means for the government of a population less than that of New York City today, and one scattered in a thin line of settlements along the Atlantic seaboard. With comparatively few textual changes it has proved adequate, by means of usage and interpretation, to form the basis of government for about 120,000,000 people covering not only our continental possessions but also those in the Far East. Therefore we can appreciate the fact that reverence and respect for this remarkable document or form of government is well justified, and rests upon a sound basis of experience and reason.<sup>8</sup>

And right here it may be said that respect for the Constitution of the United States is not sufficient for the satisfaction of the theatrical needs of our American body

<sup>8</sup> "The dignity which a remote and half mythic origin gives to constitutions, as it does to royal families, was in the ancient world and the Middle Ages enhanced by religious associations. In Greece and Italy the tutelary deities of the city watched over the oldest laws. In mediaeval countries the order of the State seemed an expression of the Will of God. Although these sentiments have vanished from the modern world, the fact that an old constitution represents a long course of progressive development, or, to use a somewhat vulgar term, of evolution, gives it some claim on the respect of imaginative or philosophical minds." James Bryce, *Studies in History and Jurisprudence*, p. 143.

politic. Along with it must go a certain amount of respect for law and order, and also for the officials—or at least for their offices if not for the individuals that happen momentarily to occupy them—in whose hands lies the duty of enforcement. George Washington, who in reality was a statesman of no mean order, understood this, and advocated a certain state and ceremony surrounding the office of president. He doubtless would have advocated also the present policy of extending this ceremony proportionately to the officials in the various grades of the political hierarchy.

Jefferson went to the other extreme of forced plainness and simplicity, as did Andrew Jackson, but the acts and activities of these two men were just as theatrical in spirit and effect as anything Washington, Hamilton or the “highest” Federalist ever did. Both types likewise impressed the American people, although the latter was more conducive to dignity and respect in the long run. No one today questions the expediency or even absolute necessity for the state and ceremony surrounding the president of the United States and the other members of the government at Washington, the governors and other officials of our respective states, or even the mayors of our cities, although there is often an undue strain on the popular risibilities in consequence. Always important throughout our history, they have been made even more so by the influx of foreigners and their absorption into our citizenship.

♥ One cause for the great success of our Constitution lies in the fact that it was not a new invention, but a

codification of British law and government and of the experience of the colonists during about 150 years in the New World. The members of the Convention of 1787 were practical statesmen and politicians, and they worked out the document in the light of their actual knowledge of the needs and desires of their people. The amount of new material is comparatively small. This is extremely fortunate for governmental machinery invariably must grow, and cannot be invented off-hand, as many constitution makers in South America or Continental Europe have learned to their cost, and as must be appreciated also by those valiant and conscientious souls who rightly have in mind the imperative need of some form of international league or association at the present day. Such an organization must grow, and cannot be made over night, even by the herculean efforts of a set of international politicians such as were collected in Paris in the years 1918 and 1919.

One typical provision of the Constitution which actually was an invention, and one of which the makers were especially proud, was the means of electing the president of the United States by an independent electoral college. And this mechanism, from the standpoint of its original purpose, was thrown into the political wastebasket in about twelve years. Meanwhile, and since then, the American people have developed a method more adapted to their desires and practical needs, even if not so perfect from the idealistic standpoint.

Another reason for its great practical success lies in the comparative brevity and simplicity of the provisions



of the Constitution. It in reality constitutes a government and its functions, and contains but little of that specific direction which is more wisely left to statute law. Herein is its greatest difference from our state constitutions, which almost universally are more or less weighed down with a mass of what should be ordinary legislation, and also with minute specific details which have no logical place in a fundamental document of such supreme importance to the body politic.

It is interesting to note that, under the stress and excitement of the period of rapid political and social change that has come upon us during these early years of the twentieth century, a number of ardent, if not profoundly learned souls, have become impatient with the delays and consequent lapse of time necessary for the passage and incorporation of amendments in the Constitution. One prominent leader in the Progressive party of ten years ago is reputed to have advocated upon the "stump" the throwing of the Constitution into the waste-basket, as hopelessly out of date, and a veritable chain upon the energies and aspirations of an advancing people. Strange to state, only a very few years later the Eighteenth, or prohibition, amendment was "slipped through" and imposed upon an unsuspecting and helpless people without their knowledge or consent, according to the testimony of another and at present very vociferous element in our population. All this would seem to prove that the Constitution in reality can be amended with all adequate ease and with the speed necessary for public needs. When there is a real demand for a change,

it can be accomplished with comparative promptness, especially when the importance of a fundamental law is remembered. On the other hand, in case of popular doubt or the effects of transitory or mob emotion, according to the present process enough time must elapse for the people to have the opportunity to reach what Lincoln called their "sober second thought." And this is in conformity with the fundamental American conviction that our people will "decide right" in the long run, but that the "run" must be long enough.

In the light of the pressure brought to bear upon the members of certain state legislatures when both the Eighteenth and Nineteenth amendments were before them for ratification, and the high art of efficient lobbying reached by the proponents of these two measures, it would seem to be more than wise to adopt the proposed amendment providing that at least one house of a state legislature must be elected by popular suffrage at the polls before that body can act upon any amendment to the Constitution submitted to it by virtue of the action of the United States Congress, or else that there may be a popular referendum of the people of each state upon the same amendment, if so desired by them. This will not of necessity increase the time element, but should guarantee the absence of undue political and social pressure or intimidation.

Every person must have some standard by which to judge, or some basis for belief and action, and this is the more necessary as we descend in the scale of popular intelligence. For this reason, frequent changes in a

Constitution or other fundamental law are most unfortunate and inexpedient. Whether right or wrong is another matter, but it is a fact that unchangeableness is one of the greatest grounds of confidence and balanced thought among all human beings. Therefore every change in a constitution subtracts an amount of reverence and respect in more than direct proportion to its frequency. This makes it imperative that matters of temporary or uncertain moment be left as far as possible to the decision of a legislative body such as Congress or a state legislature, and not be incorporated in the fundamental law. Changes must and will be made from time to time, but they should follow only after a due amount of popular thought and agitation,—using the latter term in its best sense.<sup>4</sup>

It is here that our state constitutions have chiefly fallen into error. They contain in many cases an astonishing amount of what should be left to statute law, and incorporate what Woodrow Wilson so well has called *non-constitutional* (of course not *unconstitutional*) provisions.<sup>5</sup> James Bryce once remarked<sup>6</sup> that the Constitution of the United States could be read aloud in twen

<sup>4</sup> According to statements in the current press about eighty amendments to the United States Constitution were proposed in the Sixty-seventh Congress. Going back into our national history we find that altogether some 2,000 amendments have been proposed by individual members of Congress and that of these the Senate and House of Representatives have passed twenty-one by the necessary two-thirds vote, of which nineteen have been ratified finally by the legislatures of the states (see *New York Journal of Commerce*, February 26, 1923).

<sup>5</sup> *The State* (rev. ed., 1918), p. 303.

<sup>6</sup> *The American Commonwealth* (rev. ed., 1919), Vol. I. p. 374.

ty-three minutes and is about one-half as long as St. Paul's First Epistle to the Corinthians in the New Testament. These comparisons hold with approximate accuracy in spite of the addition of four amendments since the remark was made by the distinguished British critic. In comparison with this I may say that, while I have not tried the experiment, in my judgment it would take possibly two hours to read aloud the constitution of Oklahoma which, in further contrast to that of the nation, governs only some two million people and that with but indifferent success.

In fact simplicity is one of the tests of the excellence of both constitutional and statute law and brevity is only second in importance, wherever it may prove possible. Therefore simplification would seem to be an outstanding need especially in our state constitutions and governments, for while problems are localized in their ill effects and if confined to but one state or commonwealth, yet it is difficult to quarantine against political debility when the political division in which it occurs is but one entity of a larger union. Beginning in one part, it soon will extend to the whole. And since our national Constitution is the model and inspiration for the separate constitutions of all our forty-eight states, a "decent respect" for it, its history, provisions and influence, would seem to be a matter of prime necessity throughout our citizenship and especially among the electorate. But respect and fetish worship are two entirely different things. The former is based upon knowledge, reason and sentiment, while the latter is the result of ignorance, prejudice and sentimentality.

#### IV

### PRESIDENTIAL LEADERSHIP

THE Constitutional Convention which met in Philadelphia in the year 1787 was composed of just fifty-five men. While ostensibly they came together to amend the Articles of Confederation in whatever particulars these latter had proved faulty or unworkable, in reality their task was to formulate a new plan of government. Although this was a new and undeveloped country, yet twenty-nine of these men were graduates of colleges both here and abroad. And they had not neglected their opportunities for learning, for the debates in the convention show a thorough and often profound knowledge of history and also a first-hand acquaintance with the writings on political theory current at that time.

Among the most influential of these writers was the Frenchman Montesquieu, who, in the year 1748, had published his work entitled "The Spirit of the Laws," in which he laid down the principle<sup>1</sup> that the fundamental condition for governmental organization, in order that each individual might have political liberty, was a complete separation of the three great departments or pow-

<sup>1</sup> Book XI, secs. 5 and 6. See also Blackstone, *Commentaries*, Book I, Chapter II, where he says,—“Whenever the power of making and that of enforcing the laws are united together, there can be no public liberty.”

ers—legislative, executive and judicial. He gave as the best illustration of this principle the Constitution of England and, as a matter of fact, he completely misapprehended the latter for at that very time the office of prime minister was in process of mature development to the predominant influence of today. This same official acquired his authority as the result of the legislative department (parliament) assuming, through its joint committee known as the cabinet, the exercise of executive power in the kingdom. Consequently the legal executive, the king, already had lost much of his authority a few years later at the time of the American Revolution and it was the struggle of George III to resume this and “be king” which was one of the underlying facts of greatest influence in the controversy that finally led to war and to the independence of the Thirteen Colonies.

It is hardly an exaggeration to say that the American patriots attributed in large part the misgovernment that drove them into rebellion to the disregard by the British monarch of the principle of “separation of powers” as advocated by Montesquieu. Therefore when the new Constitution was drawn up, the theory of the French writer was made a fundamental basis of the government about to be organized, and as far as possible a complete separation was made between the legislative, executive and judicial departments. The division remains the constitutional arrangement today but we have grown far from the original intention of the Fathers. This was of

necessity, for the Americans are a practical people with rare political ability, and they soon appreciated the fact that there must be some compelling forces to ensure the complete co-ordination of the different departments and make them function in unison. This has been accomplished through the organization of political parties and the assumption of party responsibility in connection with the executive and legislative powers for no matter how complete is the acceptance of the dictum that the judiciary must be absolutely separate and distinct, and which remains just as true today as ever, yet at the same time there must be a close unity between those who make the laws, and the person or persons that administer them. The question at once arises as to which of the two departments of government shall take the lead? It is the blind groping for the answer to this same question that is now one of the main causes of bad government in our states, and of much of the inefficiency or ill-success in our national government.

It seems to be the natural order of political evolution in all democratic countries with a constitutional government, for the legislative department gradually to take over the executive powers. This has been the type of growth not only in England, but also in more recent times in France, Italy, Switzerland and practically all other self-governing nations. It was prevented in the United States by the fact that our Constitution makes the executive not only a separate and distinct depart-

ment, but also places in the hands of the president certain definite powers which he can exercise at his own discretion, and entirely free from the direct interference of either the legislature or judiciary. There are two exceptions to this,—in case of a question of the constitutionality or legality of his acts, where the judiciary can step in, or when he is prevented from acting on the score of lack of funds due to the failure of the legislative body to appropriate. During early years and in spite of these constitutional provisions there was an apparent growth of power along more orthodox or usual lines of political and parliamentary development which was centered in the power of the speaker of the House of Representatives. Such a leader proved too irresponsible, and was checked as the result of wide public opposition at the time of the revolt against Speaker Cannon in 1910. This failure of attempted legislative aggression at the same time removed the only actual rival to the office of president of the United States.

It is universally recognized upon the basis of mere business efficiency that either the body that makes the laws must have some direct oversight and direction over their enforcement, or else that the person who enforces or administers the laws must have some influence in their formulation and enactment. Therefore, since the former custom has been in large part prevented by Constitutional provision, it is along the latter line that developments have been moving, especially during the



past twenty-five years. This is entirely logical, for the president is our one great national representative institution. He is the only person actually voted for by all the people. The vice-president comes in "on his coat-tails" and has been overlooked only too much both in person and abilities during the major part of our national experience. The result is seen in the fact that the president has come to be looked upon both as a national party leader and also as a species of prime minister of the people and upon him personally is visited the responsibility for the success or failure of each administration. Recently it has been remarked that "In the United States . . . there is a deplorable lack of centralization of control over the process of legislation. Depending upon the strength of his personality and his party position, the President exercises a more or less external, but on occasion none the less powerful, influence. As between the two coequal houses, at any rate, he is, in important law-making, the principal focus of unity that exists. Moreover, strange as it may seem, although the Constitution vests in him 'the executive power of the United States,' it is chiefly upon his success in legislative matters that he is held to accountability by the people. Apart from this changeful and somewhat extra-constitutional control of the President, there is in neither House of Congress any large degree of power and responsibility with respect to a program of legislation. Indeed, one can scarcely imagine legislative processes that would offer

greater contrast than those of England and the United States.”<sup>2</sup>

If we run through the history of the United States during the whole time since our national government was established, it will be found by common consent that there have been, so far, seven presidents of outstanding power and popular influence, with a possible inclusion of two more in addition. The seven were Washington, Jefferson, Jackson, Lincoln, McKinley, Roosevelt and Wilson. The two possible additions were Polk and Cleveland. Of the seven, all were men of unusual native force and ability and with the power of attracting the attention and influencing the thoughts of the people. Polk, though actually of second rate ability as statesmen go, perceived the possibilities of his office and dominated the government as did but few men in our history and most certainly to a far greater extent than did a number of other presidents who were much his superior in real ability. Cleveland showed both pow-

<sup>2</sup> McBain (H.L.) and Rogers (L.), *The New Constitutions of Europe*, pp. 48-49. Another and very interesting view is that of Dean Herbert A. Smith of McGill University Law School. "In the strictest meaning of the term the federal government is a limited or constitutional monarchy and the events of recent years have left it the only real monarchy of first class importance in the civilized world. Unfortunately popular usage has now associated the meaning of the word 'monarchy' exclusively with those governments in which the chief officer of state is chosen by the process of hereditary succession. . . . In calling the federal government of the United States a monarchy I mean that the chief executive power is vested by traditional practice, as well as by law, in the person of one man. In saying that it is limited or constitutional I mean that the area over which the ruler can exercise his authority is marked out for him' by the law and practice of the Constitution." *Federalism in North America*, pp. 24-5.

er and persistency, but his abilities, though far above the average, were lacking in effectiveness along the line of practical politics. His achievements were distinguished more by the defeat of bad policy or pernicious legislation, than by the passage or initiation of constructive measures. On the other hand, in the light of the critical times in which he was placed, there is doubt whether another man could have done any better and the country today is under a lasting debt of gratitude for his courage and honesty in those early days of cheap and unAmerican radicalism and imported socialism.

When Viscount Bryce published his monumental and authoritative work, the *American Commonwealth* in the year 1888, he entitled one of the most brilliant and important chapters—"Why Great Men Are Not Chosen Presidents."<sup>8</sup> In it he showed that men were nominated by the parties with the object of choosing good candidates, rather than great presidents. This was most assuredly the prevailing practice at that time, in spite of the fact that our people were beginning to realize the possibilities of presidential power and leadership lying before a man who had the courage and ability to use them as the careers of the seven above-mentioned presidents have shown. The main object of the politicians was to carry elections and distribute the spoils and thus afford a tangible as well as visible means of support for the professional party workers. Any candidate who was of great ability usually had incurred hostility and annexed a healthy number of enemies, all of whom would

<sup>8</sup> Chapter VIII in edition of 1914.

be opposed to his election. Furthermore, the strategic fact of his coming from a "doubtful state" was one of the most weighty considerations. The fact that he had been successful in serving the people in general was not appreciated by these latter, whereas all hostile elements were active and united in their opposition to him.

Even at the time in which Bryce wrote, there was taking place the gradual change which has led to the important developments of the past few years. Cleveland lifted the presidency to a point where at least its official opposition was of the utmost importance. He was followed by McKinley who influenced Congress and led the people in ways that were so subtle, clever and pleasant withal, that there was comparatively little of either popular opposition or appreciation of the fact. Then came Roosevelt, who was not only one of our cleverest and most effective statesmen but also, along with Woodrow Wilson, must share the credit of lifting the office to its present position of dominant force and influence among the rulers of the entire world.

There is no doubt that Theodore Roosevelt realized what he was doing for he has left in his own writings a clear delineation of his views of the office of president and his own efforts to develop it along certain definite lines. In his "Autobiography," published in 1913, he states them as follows,—“In theory the Executive has nothing to do with legislation. In practice, as things now are, the Executive is or ought to be peculiarly representative of the people, as a whole. As often as not the action of the Executive offers the only means by which the

people can get the legislation they demand and ought to have. Therefore a good executive under the present conditions of American political life must take a very active interest in getting the right kind of legislation, in addition to performing his executive duties with an eye single to the public welfare.”<sup>4</sup>

Mr. Roosevelt makes application of these views to the affairs of his administration of the office of president by saying,—“The most important factor in getting the right spirit in my Administration, next to the insistence upon courage, honesty, and a genuine democracy of desire to serve the plain people, was my insistence upon the theory that the executive power was limited only by specific restrictions and prohibitions appearing in the Constitution or imposed by the Congress under its Constitutional powers. My view was that every executive officer, and above all every executive officer in high position, was a steward of the people bound actively and affirmatively to do all he could for the people, and not to content himself with the negative merit of keeping his talents undamaged in a napkin. I declined to adopt the view that what was imperatively necessary for the Nation could not be done by the President unless he could find some specific authorization to do it. My belief was that it was not only his right but his duty to do anything that the need of the Nation demanded unless such action was forbidden by the Constitution or by the laws. Under this interpretation of executive power I did and caused to be done many things not pre-

<sup>4</sup> Theodore Roosevelt, *Autobiography*, p. 282.

viously done by the President and the heads of the departments. I did not usurp power, but I did greatly broaden the use of executive power. In other words, I acted for the public welfare. I acted for the common well-being of all our people, whenever and in whatever manner was necessary, unless prevented by direct constitutional or legislative prohibition. I did not care a rap for the mere form and show of power; I cared immensely for the use that could be made of the substance.”<sup>5</sup>

Of course this wide and extreme method of constitutional interpretation and the use of political leadership to the extent practiced by Mr. Roosevelt caused loud complaints, especially among his political and personal opponents, of whom there were many and as always is the case when any new line of development is followed or any new path hewed out of the maze of conflicting problems. On the other hand, the rank and file of the American people are always ready to admire the man of energy who can “get things done,” and this Mr. Roosevelt most assuredly was successful in doing; therefore his popularity was predominant among the leading men of his day. Furthermore, there is no doubt that his views were closely in line with the logical and acceptable method of political development in the United States. The people felt that in their president they had

<sup>5</sup> p. 357. In a letter to Sir George Otto Trevelyan, the celebrated English historian, written May 28, 1904, Mr. Roosevelt remarked that ‘the Presidential office tends to put a premium upon a man’s keeping out of trouble rather than upon his accomplishing results.’ J. B. Bishop, *Theodore Roosevelt and his Time*, Vol. II, p. 143.

a man who understood them and their aspirations, and who incarnated the average American of his day. Under this bold and vigorous leadership the national government functioned with unusual smoothness and efficiency and both houses of congress, however unwilling their membership might be, followed obediently and meekly with only half-suppressed protests.

It was during this time that Woodrow Wilson, then president of Princeton University, was travelling west in order to attend an alumni reunion in Denver, Colorado. On the train from Harrisburg to Pittsburgh were several United States senators who joined with Mr. Wilson in a spirited discussion of men and current politics, while gathered together in that center of male conversational wisdom,—the smoking compartment of a Pullman car. The senators began vigorously criticising Roosevelt and one of them remarked, “Dr. Wilson, one of the greatest mistakes ever made was when the founders of our government placed in the Constitution the provision allowing the president to send messages to Congress. That man Roosevelt proposes things we don’t want, and then sends in messages so that we hear from our constituents and have to pass the measures because the people want them.” Mr. Wilson calmly replied, “Is not that what you are there for?” This question was a portent of what was very soon to come.<sup>6</sup>

Mr. Roosevelt was succeeded by Mr. Taft, a man of his own choosing and one of the most popular, but un-

<sup>6</sup> This story is authentic as the writer got it from Mr. Wilson himself in 1908.

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successful of presidents in recent times. Both by temperament and by intention Mr. Taft was far removed from the type of his predecessor, and his administration soon was wrecked by these very facts. Mr. Taft held what Walter Bagehot would call the "literary theory" of the Constitution.<sup>7</sup> In other words, he believed that it was his duty to hold back and allow Congress to go its own legislative way. When acts were passed and laid before him for his approval, he should sign them unless they were of such doubtful expediency or so vicious or unconstitutional in character, that they deserved the fate of the executive veto.<sup>8</sup> Furthermore, being of a judicial type of mind and inured thereto by long training and successful experience, Mr. Taft repeatedly was so occupied with the assessing of the relative merits of arguments for and against any certain line of political action that before he knew it some clever and energetic politician had "run off with the bacon."

Much to his own personal misfortune, Mr. Taft soon fell under the influence of the "old line" or "stand pat" type of partizan leaders in the Republican party, who had fallen hopelessly out of step with the times and who had been the main opponents both of the theories and policies of Mr. Roosevelt. Due to Mr. Taft's inherent kindliness, and his legal beliefs, they went ahead unrestrained with their own measures of legislation and

<sup>7</sup> See *English Constitution*, pp. 69-70, 125-6.

<sup>8</sup> Mr. Taft in his book entitled *Our Chief Magistrate and his Powers* (1916) gives an able and illuminating statement of his theories of the Presidency.



policy, although years behind the point to which popular interests and expectations had progressed. There was a logical and popular revolt, and Mr. Taft had to bear the burden of failure. For the people had come to the point of expecting leadership and instruction from the president, and also held that official accountable for the merits or defects of all congressional as well as administrative action. The revolt against Speaker Cannon, who was closely allied with the "stand-pat" element, and the Democratic victory at the congressional elections in November 1910, were the unmistakable handwriting on the wall. But the "stand-patters," true to their Bourbon characteristics, meanwhile had learned nothing and forgotten nothing, so the débâcle of the Republican party came in the campaign and elections of 1912.

This brought Woodrow Wilson into the presidency, who reverted at once to a type of president more akin to that of Mr. Roosevelt than perhaps even Mr. Wilson himself would care to acknowledge, and was a signal illustration of an arm-chair philosopher who made a complete success of his theories when put into actual practice.

As the story above would indicate, Woodrow Wilson had carefully worked his way through American political and constitutional history to a point of thorough appreciation and understanding both of the powers and the possibilities of the office of President of the United States. Himself a great admirer of the British form of parliamentary government, yet aware of the difficulties of introducing such changes in our own Constitution

and political habits as would make possible the recasting of our institutions along the lines of modern British development, he envisaged the presidency as an office capable of the realization of leadership both in public opinion and legislation with the result that it would have a faint resemblance, at least, to the influence and efficiency of the British prime minister. He also believed that, by virtue of his nomination, a candidate for the presidency was made leader of his party, for the time at least, and that as party-head he should make his appeal for the confidence and favor of the people for both the party as such and for himself as the titular leader. This theory made effective both power and responsibility, and was a distinct advance upon the old American idea of balance of powers and a division of responsibility and authority. In Mr. Wilson's writings during the preceding twenty-five years could be seen a growing understanding and appreciation of the possibilities of the presidency, and this was accentuated by his experiences in such executive offices as president of Princeton University and governor of New Jersey. These views are well summed up by Mr. Wilson in his work on "Constitutional Government in the United States" which was published in the year 1908. Said he,<sup>9</sup>—the President "has become the leader of his party and the guide of the nation in political purpose, and therefore in legal action. . . . Greatly as the practice and influence of Presidents has varied, there can be no mistaking the fact that we have grown more and more

<sup>9</sup> pp. 60, 79.

inclined from generation to generation to look to the President as the unifying force in our complex system, the leader both of his party and of the nation. To do so is not inconsistent with the actual provisions of the Constitution; it is only inconsistent with a very mechanical theory of its meaning and intention. . . . We can never again see him the mere executive he was in the thirties and forties. He must stand always at the front of our affairs, and the office will be as big and as influential as the man who occupies it."

Immediately after his inauguration in 1913 Mr. Wilson proceeded to put his theories into practice. When he had called Congress in special session in April, instead of sending in a written message he appeared before a joint session of the two Houses and personally read his message to them. The shock of this move had a theatrical effect upon public opinion. In the first place, although a reversion to the earlier custom as followed by Washington and John Adams and discontinued by Jefferson it had the effect, after such a lapse of time, of introducing something entirely new into the ordinary procedure of the government at Washington. As was to be expected, the members of Congress were interested as well as attracted by the pleasing personality of the new president, but also the attention of the people was attracted in a very strong and telling way for it was only natural that they should wonder what important thing Mr. Wilson had to say in this dramatic manner. The latter merely reminded Congress that it was called together to revise the tariff, but made no specific mention

of schedule or rates. On the other hand, the citizens of the entire country had been informed as to just what business should be before Congress at the time, and were curious to see what the legislators were going to do about it. This focused public attention in an effective way. When during the course of the next few months certain selfish interests maintained a strong and effective "lobby" at the national capitol, Mr. Wilson came forward with a public statement calling attention to the fact and the lobby melted away. It was due to his driving personality, prompt and frank appeals to the country, and a reserved and judicious handling of the patronage of office in a way both effective and legitimate, that the president was able to carry through his tariff and numerous other matters of important legislation. This was despite the more or less covert opposition of certain elements both in and outside of Congress who had their own interests to further and that entirely aside from the interests of the people at large.

Whether one agrees with Mr. Wilson's policies or not, there is no doubt that he made a remarkable success of his first administration, with the possible exception of foreign affairs, and in this latter field there was much less innovation in method or procedure than in the field of domestic politics and administration. Also there is no doubt that during his second term of office he was less and less successful until he ended in complete defeat at the hands of the Senate and of the people themselves in the elections of 1918 and 1920. And in the opinion of the writer this was because he had de-

parted from his own theories and had changed leadership into dictation. It may have been from personal peculiarities, or perhaps from a natural human weakness in the face of the enormous and almost irresponsible power placed in his hands as the result of exigencies of war, but at any rate Mr. Wilson lost all sense of proportion and attempted to dragoon the people of the United States into his way of thinking and that in spite of many ominous warnings of what inevitably was to come. His greatest mistake of all, from a political standpoint, was the appeal for a partizan Democratic Congress at the election in November 1918, and his resounding defeat was a proper and well-administered rebuke for attempting to turn patriotic support into party advantage. But even when the rebuke was administered, he utterly failed to act upon his own theory of popular leadership, proceeded to disregard this direct vote of "lack of confidence" and went ahead in a stubborn and utterly blind way to carry through his plans irrespective of the wishes of the American people.

His reception abroad and influence at Paris were due in the first place to the misunderstanding by foreign politicians of his political repudiation at home which would have caused his relinquishment of office on the morning after election day had he been ruler of any of the other Allied powers, and in the second place to his office and to the fact that he had in his hands an enormous amount of executive power for at least two years to come. The refusal of the people of the United States to endorse his work at Paris was in no manner a repudi-

ation of faith or of obligation, for their president had undertaken to commit them beyond his moral or political power, they had given ample warning of their disagreement, and were in no way, legal or moral, bound by his promises.

But all this is now a mere matter of academic interest. The writer is firmly convinced that the conception of the presidency as held by both President Roosevelt and President Wilson is the correct one, and is the logical result of the only line of development that will adequately meet the needs of the country both present and future, if the latter will have a smoothly-working, responsible and efficient executive, with a proper unification of legislative and executive functions. Owing to the Constitutional provision (Article I, section VI, paragraph 2) which prohibits a member of Congress from holding any civil office, it would be impossible for our legislative department to assume executive functions or leadership according to the model of British parliamentary institutions. Therefore, any other means of procuring this unity would be at the cost of a large amount of Constitutional change and, as indicated in a previous chapter, while change must come at repeated intervals if this country would enjoy a steady and continuous growth in power and accompanying liberty, yet the less change the better, and then only after due proof that reforms can come by that method alone.

Mr. Harding assumed office at a time of reaction against this new type of presidency. Congress was quick to take advantage of the temporary eclipse of the

Roosevelt-Wilson theory of presidential leadership, and the experience of the country with the Sixty-seventh Congress has gone into history as a record of hard and continuous work that totally failed to meet the desires or expectations of the people. It would seem that the great task for Mr. Harding was to strike a balance between the type of president as illustrated by Mr. Taft, and that of Mr. Wilson during his second administration. He must lead, but not dictate, and his failure adequately to meet this need and strike the balance might have cost him dearly, and his party with him. Our people expect the president to act with power and vigor, and from the semi-detached standpoint of the good of the country as a whole, rather than from that of any section or class. Congress, if left to itself, is apt to pass legislation that is a rough compromise between conflicting and competing interests, selfish or otherwise, and often influenced by partizan or class, rather than sound economic or political reasons, using these latter words in their broad sense.

That there is no reason to fear any danger to our institutions from such a concentration of power in the hands of the president is shown by the complete legislative defeat of Mr. Wilson just as soon as he lost his popular support. A president can lead or even coerce Congress if he has the people with him, but he will lose his grip immediately when public opinion changes in the opposite direction. In fact there is comparatively little danger to liberty in a democracy, no matter how great may be the centralization of the machinery of

government, provided that the officials are elected by an intelligent people, are finally responsible to these same people for a continuation in office and must give to them an account of the stewardship when the term of office has expired.

The suggestion has been made from time to time that seats upon the floor of both Senate and House of Representatives should be given to the members of the president's cabinet.<sup>10</sup> As this should include the privilege of speaking and submitting measures for legislative action but not the right to vote, it would place them in much the same legal position as the present delegates from the territories and the plan could be accomplished by a mere change of the rules of each house of Congress. It is possible that this may be done at some future day, for there is increasing desire on the part of thoughtful members of Congress for a closer co-operation with the executive department of the government. Since these latter never can be members of the cabinet and retain their congressional membership on account of the constitutional provision noted above, there would be no danger of legislative aggression and the overthrow of the power of the presidency such as has occurred in France during the years of the Third Republic. The danger would be on the other side, that of executive aggression upon the rights and privileges of Congress. This also should prove of small moment, for, as already pointed out, the president and his cabinet, who draw

<sup>10</sup> Ex-President Taft favors this change. See *Our Chief Magistrate and his Powers*, pp. 31-3.



their authority entirely from him, could influence Congress only to the extent, or for as long as, they held the undoubted support of public opinion.

The great danger would be from continual friction, and a smooth and successful working of the plan would depend in large part upon the tact and political, not to mention debating, ability of the cabinet members. Few people remember that a plan somewhat similar to this was included in the Constitution of the Confederate States during our Civil War. In Article I, section 6, paragraph 2 of that document it was provided that "Congress may, by law, grant to the principal officer in each of the Executive Departments a seat upon the floor of either House, with the privilege of discussing any measures appertaining to his department." Whether due to the inherent difficulties of the plan, or to the personal peculiarities of that rare collection of erratic individualists who composed the cabinet of President Jefferson Davis, the success was small in proportion to the extent to which it was put into practice. Mr. Davis and his cabinet on one side, and the Confederate Congress on the other, worked but poorly together and that in spite of the imminent danger overhanging them and their cause during most of their official services. Friction was an outstanding characteristic of the Confederate government and, without the later predominant power and influence of Robert E. Lee who finally became a dictator in everything but name, the collapse of the Confederacy probably would have come a year sooner.

In spite of this rather unfortunate experience in

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American history, the plan would seem to be well worth the trying, since in case of failure the means of ending it would always be within the power of the Congress by simple legislative action. A clever and able president would be careful to choose members of his cabinet with their added legislative duties in view, and in case of harmonious and successful co-operation between them and the members of Congress the resultant unity, publicity and efficiency of governmental action would be an advance of striking value beyond anything as yet achieved in our political history by the methods of party co-ordination and responsibility generally in use. The experiment should be at least worth a trial, in view of the importance of the results of possible attainment.

## THE POSITION OF THE SENATE

THERE are two great collections of writings that present a veritable store-house of material for the better understanding of our Constitution and government. These are the debates of the Convention at Philadelphia which formulated the Constitution, and the collection of essays in exposition and interpretation of that document written by Hamilton, Madison and Jay, and entitled "The Federalist." I already have referred to the learning and ability of the majority of the convention members and the objectives they had in view. Students of American institutions now are becoming more and more aware of the extreme importance of the discussions held by them behind closed doors during that long summer of 1787, and there is no better way to find the ideas and ideals underlying the work of these founders than to follow them from day to day in the slow and painful task of hammering out the political machinery which has formed the basis of the prosperity and success of the United States during nearly a century and a half of its history. In further exposition of their work should be read the "Federalist" which contains the arguments as presented from time to time in the press of the day, when different features of the government-to-be were explained by Hamilton

and Madison, who had been members of the convention, and also by John Jay, who himself ranked among the ablest statesmen of this time. Also the "Federalist" is one of the most remarkable discussions of political science ever published, aside from its historical and practical applications. If only more of our citizens could be induced thoroughly to read and digest these two great works, the foundations would be laid for a real popular understanding of our fundamental institutions.

It will be found that as soon as the Fathers succeeded in harmonizing the views of those who insisted upon state representation with those who desired a strong national government and representation of the people according to population, and this by means of the present provisions concerning our Senate and House of Representatives, they addressed themselves to a formulation of the powers and duties of the two Houses. They expected and intended the House of Representatives to be the more powerful body, following the natural line of reasoning that its supremacy would be assured by the fact of its drawing its power and authority more directly from the people. Almost from the beginning, however, the Senate began to gain at the expense of the other House, until it became virtually predominant at the close of the nineteenth and beginning of the twentieth centuries.

Of course the facts of its smaller number, longer tenure in office, unlimited debate, its influence or almost control over the spoils of office through ratification of presidential appointments and over foreign affairs by

the ratification of treaties, had much to do with this increase in power. But perhaps the final and most determining reason lay in the indirect election of its members who were chosen by the legislatures of the different states. This senatorial aggression was acquiesced in for a time by the people of the country who looked with pride upon the dominant power of the body, its great prestige and legislative importance, and its reputation abroad where it was admired by people in those countries which were struggling to find a solution of their own problem of the proper basis of representation for a bicameral legislative body and that aside from hereditary and class as opposed to popular election. Great Britain especially has this same problem yet to face at the present day.

As time went on, the Senate was found frequently to be rather slow to meet the needs of liberalism as exemplified in more progressive legislation. The senators often were the representatives of great business or financial interests and when under Mr. Roosevelt the attempt was made to curb the power of great corporations and "big business" generally, the last refuge of these latter was found to be in their control of certain members of the Senate. This gave the final impulse to that movement which had its basis in a logical extension of the principles of Jacksonian democracy and stressed the necessity of increased and more direct popular participation in the conduct of government. The combination of the practical with the theoretical succeeded in carrying through Congress and the necessary number of state

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legislatures the Seventeenth Amendment to the Constitution which provided that senators hereafter should be elected by the direct vote of the people.

This is perhaps the most fundamental functional change in the Constitution since its original formation. While it was vigorously opposed by some of the most thoughtful of our leaders both in Congress and outside, yet it was an inevitable step in the general progress of a more radical movement peculiar to the times, and absolutely necessary from the standpoint of the excellence and efficiency of the state legislatures. These latter, which primarily should confine their attention to legislating for the welfare of the individual commonwealths, were thrown into a veritable morass of machine politics and even of corruption. Often it would happen that all business would be tied up for weeks at a time, while the members pulled and hauled, or were pulled and hauled, this way and that in the choice of a senator. Practically every state in the Union went through this sort of experience at one time or another, but Delaware under the influence of Addicks, or New York with its struggle between Tammany and independent Democracy, are good illustrations of the evils that became a veritable political curse. The passage of the Seventeenth Amendment relieved the legislatures from this political burden, and they now can devote their attention to their proper and legitimate field of service. This should make more possible in the future the necessary reforms which must take place if these same bodies are not to be wiped

away by the wrathful citizens at some time of popular excitement.

But beginning with 1913, the United States Senate has steadily lost in power and prestige, and even perhaps in intellectual ability on the part of its membership. This is undoubtedly due in large part to direct election for, under the old method of choice, the organization of the political party in the respective states was in reality the agency by which both choice and election (or ratification) by the members of the legislature were made. This resulted in increased power in the hands of the actual rulers of the party destinies and strengthened the authority of the party organization throughout the country. Thus was seen greater efficiency in legislation, and the present state of political disintegration in the Senate, with the growth of blocs and various class interests, is probably a direct result from this loss of power and influence by party organizations in the separate states.

In the second place, there is no question that our individual citizens are not by any means awake to the necessity of choosing men or women of ability when the task of nomination by the direct primary faces them. No matter what might be the limitations and selfish intentions of the typical party leaders who privately determined the person who should be elected senator by the members of the legislatures, at least they were careful to choose men of some definite ability. During the past ten years there now has been opened a new avenue

of advancement to the demagogue, the loud talker, or the purveyor of popular nostrums. It is to be hoped that this is only a temporary difficulty and when once conditions become so bad that popular attention and interest are aroused, that the people themselves, in whose hands lies the cure, will accept the responsibility and see that able and experienced senators are nominated and chosen at the polls.

It is possible that the extension of civil service rules for eligibility for appointment to federal positions, and the consequent lessening in the amount of spoils which each senator can dispense to his followers, may have decreased the power and influence of the whole body. Also the growth in power on the part of the president, as discussed in a ~~previous~~ chapter, may have caused a lessening in senatorial prestige in addition to the above. While the loss of power on each of these counts may be small, yet the aggregate would amount to a great deal. In opposition to this view should be recorded the opinion of Mr. Taft.<sup>1</sup> He thinks that a further cutting down of the number of appointees on the basis of senatorial advice, or "senatorial courtesy" as it is euphemistically entitled, would eliminate "opportunity for the use of Federal appointments to influence or control political nominations and elections, an abuse which has greatly helped the maintenance of machine politics and the success of professional political positions." This also would weaken the party power to pass needed legislation, as indicated above, but Mr. Taft goes on to assess the

<sup>1</sup> *Our Chief Magistrate and his Powers*, pp. 65-6.



actual value of the spoils of office to the individual senator by saying,—“Congressmen and Senators have an impression that to lose this patronage would very seriously interfere with their political future and power. I do not mean to say that some Congressmen and some Senators do not make such patronage politically useful for themselves, but I venture to think, and the judgment of men of much greater political experience and observation than I have had will sustain me, that the having, and use of, such patronage more often injures than helps the user in securing his renomination and reelection. It is a saying in Washington, justified by the fact, that an appointment of a first, second, third or fourth class postmaster not infrequently creates for the Congressman who secures it ~~one~~ <sup>quite</sup> ingrate and ten enemies.”

A counter influence tending toward the retention or even renewed growth of power and influence on the part of the Senate as a body should be found in the increasing importance of foreign affairs in our national life, and the necessary share which the upper House has in their determination through the power of ratification or rejection of treaties negotiated by the President and the Secretary of State. In spite of the gradual loss of prestige on the part of the Senate during the years 1913 to 1918, it suddenly sprang into prominence, and even dictatorial power, on account of the struggle with Woodrow Wilson which it successfully waged concerning the ratification of the Treaty of Versailles and the League of Nations. There is no question that the people

of the country at large were overwhelmingly in support of the Senate and this enabled that body to win a decisive victory. The results of this controversy should have restored the upper House to much of its former power and prestige, but within the following two or three years it fell back to the position of impaired influence from which it had been enabled to emerge temporarily owing to the strategic opportunity afforded by President Wilson's blunders. This weakness probably has been caused by an inclination on the part of a large number among the senators to play for the support of racial and sectional interests in their attitude toward our foreign relations, rather than to consider the welfare of the entire United States and that alone. There have been few more disgusting exhibitions of this political cowardice than the haste with which certain senators passed resolutions in favor of Irish independence and advocated the inclusion of that island as a member of the League of Nations, thus interfering in a purely domestic problem of Great Britain and one that had no connection with the welfare or interests of the United States. It is gratifying to note that several of those most active in this movement were defeated at the polls in the 1922 elections. Mr. Roosevelt remarked that "the people in Congress" were a "short-sighted" set as regards international matters.<sup>2</sup> But this is also one of the greatest shortcomings of the people of the United States as such today.

The defeat of Mr. Wilson and his foreign policy by

<sup>2</sup> *Autobiography*, p. 209.

the Senate is only one instance of the power that body can exercise and has exercised many times in our history. Due to the particularistic influences mentioned above, the senators have not always had the support of the entire country behind them, but in fact have had a large part of the country against them in so far as the people have been awakened to a point sufficient to form any sort of public opinion with regard to a specific question. This has lead to much criticism of the Senate in the press and elsewhere for using its undoubted constitutional powers in defeating certain proposed treaties. But it was the evident thought of the members of the Convention of 1787 that the Senate would act as a sort of privy council to advise the president, somewhat after the model of the British Constitution. It will be noted indeed that they made no provision for a cabinet in the sense that the word is used either in Great Britain or the United States today, but left to the Senate the duties of personal advice to the executive. This intention is true with even greater force when we consider the contest with Mr. Wilson. One section of the press seemed to think that the Senate by its opposition to him in the years from 1918 to 1920 was almost committing sacrilege, being ignorant of the fact that on September 7, 1787 James Madison moved in the convention that the Constitution "authorize a concurrence of two thirds of the Senate to make treaties of peace, *without the concurrence of the President.*" He argued that "the President . . . would necessarily derive so much power and importance from a state of war that

he might be tempted, if authorized, to impede a treaty of peace." This showed both keen insight and foresight, as the history of recent years has shown. Mr. Madison was "strenuously" supported by Pierce Butler of South Carolina, but the motion was lost by the vote of eight states to three. It was thought that "the precaution was unnecessary" since "the power of the President in this case was harmless."<sup>8</sup> In the light of these facts, the criticism of the Senate by the partizans of Mr. Wilson would hardly seem to be logical from the standpoint of history.

Until recent times the Senate has been considered the stronghold of conservatism and most of the radical strength has been centered in the House of Representatives. Today the situation has been reversed and the influence of the radical agricultural and other "blocs" has been exerted with three-fold strength in the upper House. There is a very clear reason for this which lies in the fact that at present radicalism is much more powerful in the agricultural communities of the middle west than elsewhere. The agricultural depression of the years following the war, due to the uneven liquidation of the results of inflation, has given an immense impetus to radicalism among the farmers who have found their products falling to or below the pre-war prices while the manufactured goods they must buy and the labor they must hire are both upon a basis of extreme increase in cost.

<sup>8</sup> Hunt (G.) and Scott (J. B.), *The Debates in the Federal Convention of 1787*, pp. 530-1.

It happens that these same communities are organized into states which are thinly settled when compared with the great communities of the north and east, and consequently are much over-represented in the Senate, in comparison with the more populous states. This is due to the exceeding carelessness with which new and sparsely settled states have been admitted into the Union during the past fifty years. Thus Nevada has only two-thirds of the population of Trenton, N. J.; Wyoming has a population a little larger than that of Syracuse, N.Y.; Arizona has a few more inhabitants than Rochester, N.Y.; Utah has less than Buffalo, N.Y.; Idaho less than Milwaukee, Wis. In contrast to this the great states of New York, Pennsylvania, Illinois or Ohio have only two members each in the Senate, but 43, 36, 27 and 22, respectively, in the House of Representatives. Consequently the lower House more adequately represents the people of these states and also of the United States than does the Senate, and these same people are looking to it as a body capable of protecting them from the extreme and "half-baked" type of class legislation that lately has been so characteristic of those agitators who have great influence upon the opinions of the western agricultural elements.

More and more has it come to pass that senators attempt to represent great districts of the country, although elected by the separate states.<sup>4</sup> Thus for example we find those from the Pacific Coast, from the Gulf

<sup>4</sup> Woodrow Wilson has an interesting discussion of this in Chapter v. of his *Constitutional Government in the United States*.

states, or from New England, acting in close co-operation and irrespective of party lines whenever the interests of their sections are involved in contemporary legislation. As recently pointed out by Professor Frederick J. Turner,<sup>5</sup> just in proportion as our states have receded in relative importance to the national government have sections emerged in importance and effective power. In this way the influence of the individualistic activities of the senators who represent the separate small populations of the western states has become obscured in the minds of the people of the more populous and less represented localities. If the present radical tendencies continue and result in destructive legislation, there may be an awakening among these people and a demand for a complete and "radical" change of another kind in our Constitution that will restrain or destroy the power of the over-represented states.

It would be possible to amend the Constitution so that the equal representation in the Senate be abolished. It is true that Article V provides "that no State, without its consent, shall be deprived of its equal suffrage in the Senate," but if there were sufficient strength throughout the country to carry through such a change, there also would be the strength sufficient first to pass a separate amendment making the change in representation possible by striking out of the Constitution the above clause. It would be difficult to imagine a more unfortunate and revolutionary procedure, but it is not an exaggeration to indicate the possibility that some such

<sup>5</sup> *Yale Review* for October 1922.

event would happen should the entire program of the western radicals show any signs of being put into effect.

There is one way in which the evil effects of the overrepresentation of the radicals in the Senate might be rendered of less danger and that is by means of a continuation of unlimited debate and power of delaying proceedings characteristic of the rules of that body. These have generally been considered elements of weakness in the procedure of the upper House and especially during the past twenty years or more. Also the radical elements, when not so strong as now, have used these means with great vigor although at present they are not quite so enamored of the means of obstruction hitherto found so convenient.

It has generally been recognized that the Senate has afforded too great opportunities for self-advertisement or for the holding up of necessary business by the opinionated or the demagogic few and there is a consensus of public opinion that must lead in time to the amendment of the rules so that some form of closure of debate may be instituted whenever a decisive majority of the members may deem it necessary. Mr. Roosevelt, the very personification of promptness and efficiency in government, expressed his opinion of the Senate with characteristic frankness. Said he—"I do not admire the Senate, because it is such a helpless body when efficient work for good is to be done. Two or three determined Senators seem able to hold up legislation, or at least good legislation, in an astonishing way."<sup>6</sup> At

<sup>6</sup> J. B. Bishop, *Theodore Roosevelt and his Time*, Vol. I, p. 433.

another time he said in addition—"the Senate has an immense capacity for resistance. There is no closure, and if a small body of men are sufficiently resolute they can prevent the passage of any measure until they are physically wearied out by debate. The Senators get to know one another intimately and tend all to stand together if they think any one of them is treated with discourtesy by the Executive."<sup>7</sup>

After all else is said, the one great defect in the Senate as at present constituted is the lack of leadership. And there must be leadership in a democracy even more than in an oligarchy or autocracy, for the multitude of participants in the government make so much the more necessary the co-ordinating force of leaders to influence and guide the unorganized crowd. The present eclipse in senatorial power is probably only temporary, and when a crisis may come undoubtedly the men will be raised up to meet it. This has been the experience in the past of our history as a nation, and we may hope that it will be ours again at some near date in the future. When once our people realize the importance of a careful choice of those who shall do the legislating for them and when they are willing not only to choose but to give strong and consistent support to the senators after they have taken their seats in the Congress, there will not be lacking able men and women who are willing to sacrifice their time and ease if there be prospect that they can serve their country to some purpose. Furthermore, the Senate must so change its method of choosing chairmen

<sup>7</sup> J. B. Bishop, *Theodore Roosevelt and his Time*, Vol. II, p. 5.



of committees, that leadership will depend upon ability rather than length of service. This will be more fully discussed in the next chapter in connection with the committee system in the House of Representatives.



## THE HOUSE OF REPRESENTATIVES

THE Convention of 1787 provided in Article I, section II, paragraph 3 of the Constitution that the House of Representatives should consist of a total of 65 members at the beginning and that thereafter the representatives should be apportioned according to population. That is to say, the members of the First Congress were specifically apportioned among the thirteen original states, but the Constitution went on to say that in apportioning "according to their respective numbers"—"The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct." Following this provision we have had an increase in the membership of the house after every decennial census except one, that of 1840, until at present the number is 435. This membership is according to the apportionment following the census of 1910. Congress so far has failed to agree upon a reapportionment since the last census, that of 1920.

Of course such a large increase in the size of the house has made organization necessary in order to manage the daily sessions and transact business, and also has reduced the time and opportunity for debate on the floor

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almost to the vanishing point. The machinery evolved to meet these necessities of organization is that of a system of committees, at one time increasing in number until there were altogether 75 of them, varying in size and power with the importance of the subject matter to which they were assigned. In the Sixty-seventh Congress this number was reduced to 60, largely on account of a reorganization following the adoption of the Budget Act, and at about the same time the Senate reduced its committees from 57 to 34. In both cases a number of committees which were entirely out of date, and which seldom or never met, were abolished.

At the present time, as also for the past fifty years, the major part of the actual work of legislation is done within the committee rooms, and the floor of the House practically has been reduced to a mere clearing house for committee reports. Along with the growth in the committee system the power and prestige of the Speaker was increased to a point of actual dictatorship at the hands of such men successively as Reed, Henderson and Cannon. But as before mentioned this domination was ended by the revolt against Speaker Cannon on the part of the Progressive Republicans and Democrats in the years 1910 and 1911, and the transfer of the power to the leading members but especially to the enlarged Committee on Rules and several years later to the "Steering Committee." This last is not chosen by the entire House, but is composed of members of the majority party and theoretically selected by the party caucus. Also the membership of the regular committees is no

longer the result of appointment by the Speaker, but subject to the choice of the entire House. It has been well said of the old committee system that it was one which "bred revolt at the very moment at which it had lifted the business of Congress to the highest point of efficiency that it had ever attained and which fell in the end because, in the very process of reaching perfection as an instrument of government, it sacrificed flexibility to efficiency."<sup>1</sup> Perhaps it would be even nearer the truth to say that the cause of popular revolt against the old system was the lack of direct responsibility to the people, since an unpopular Speaker could be hit directly only in his own district and most of our voters as individuals have not reached the point of casting their ballots for or against a party as such on account of their approval or disapproval of the personality of its congressional leadership.

The process of legislation by means of committee meetings now stands unimpaired and is operated just as before. These committees are not only bi-partizan, with the parties represented on their membership in rough proportion to their total strength in the House of Representatives, but their work is usually done in secret. It is true they hold public "hearings" from time to time but these latter usually are for the sole purpose of hearing the demands or complaints of people or interests which are more or less affected by the legislation under preparation. Therefore the bills are usually the result of trading and are bi-partizan in form, that is to

<sup>1</sup> George Rothwell Brown, *The Leadership of Congress*, p. 12.

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say, the members of the minority can influence the final form of a bill without the public knowing exactly where to apportion praise or blame for the good or bad contained in any specific legislation. This is a direct invitation to "log-rolling" and trading, two of the greatest defects in American government today.

As though this were not sufficient to disgust the citizen whose interest in his government is confined to a desire for the good of the public at large and not of class or section, the chairmen of these committees, and the consequent leadership in Congress, depends in large part on seniority of service on a specific committee. In other words, according to our present rule leadership is dependent less on ability than on length of service. A clever or shrewd politician from a district in which his party is heavily in the majority now may so manipulate party machinery or appeal in a demagogic way to the prejudices or cupidity of the voters that he is repeatedly reelected, and by this means reaches a position of power and influence far removed from the actual worth of his services,—not to mention his intellect or statesman-like abilities. Or, looking at the matter from the standpoint of average chances of political success, it was this system that gave us successively during the war two chairmen of the Committee of Ways and Means who utterly failed to measure up to the needs and opportunities of their position. The faulty and unfair system of taxation under which the country has been suffering for the past six or eight years, with consequent bad effects upon business and finance, not to mention the prosperity

of the individual citizen, is in large part due to the utter breakdown of this method of choosing congressional leadership.

Another cause of weakness among our representatives is the peculiar American belief that a representative should necessarily live in the district which he represents. The Constitution merely provides that he must be a resident of the state which he represents, but this has been extended to include the districts into which the state is divided, and that by an almost invariable rule. Of course this is entirely counter to the British rule, which enables a party to keep a leading member in Parliament in case of a local defeat by permitting him to "stand" for election in some other district. Furthermore, our American custom, for that is all it is, confines the choice of the voters to a less able resident of their locality rather than to a possible candidate of outstanding ability, but from elsewhere. As a matter of fact a man who is capable of becoming a member of the House of Representatives also should be capable of judging where the legitimate interests of his constituents may lie without the necessity of residing in any definite part of a state.

The most unfortunate results of this custom are found within the walls of the House of Representatives itself, for the members are bound down to their districts and the supposed peculiar interests of the latter, until they have been reduced from the position of legislators for the entire nation to that of "ambassadors of local interests," as Professor Henry Jones

Ford well has said.<sup>2</sup> This is one of the greatest evils in our legislative processes today, and is characteristic of state legislatures as well as of the national Congress. Blackstone has given the correct standard by saying of members of the British Parliament that—"every member, though chosen by one particular district, when elected and returned, serves for the whole realm; for the end of his coming thither is not particular but general; not barely to advantage his constituents but the commonwealth."<sup>3</sup> Our representatives at Washington now are occupied with the division of the spoils of office, the procuring of appropriations for their districts or even appropriations and favors for certain persons and interests therein, and in "building their fences" generally rather than studying the welfare of the entire United States. It is a real tribute to the essential honesty and common sense of the majority of our congressmen that in spite of these handicaps of position and custom the quality of legislation and political service on their part has been of the excellence they have succeeded in attaining.

This legislative situation brings up most important questions both of policy and responsibility—questions that strike at the root of the success or failure of representative government itself. The members of Congress reply to the critics of certain pieces of legislation that they also hear from the advocates of these measures with equal force. Any one familiar with the present

<sup>2</sup> In personal conversation with the author

<sup>3</sup> *Commentaries*, Book I, Chapter II.



conditions in Washington, with the enormous development of organized propaganda by well organized interests, knows that the beneficiaries of these specific bills may not have been idle but working in a most efficient way to secure their passage. Of course, it is the duty of the individual representative, who desires adequately to follow public opinion, to judge between the claims of the rival interests.

But there is, in addition, still another attitude taken by a large number of our legislators who, irrespective of public opinion, have forced through certain questionable measures such as the soldier's bonus and the Fordney-McCumber Tariff. The interesting point in this situation is that these legislative leaders had good precedent for their attitude. Edmund Burke is quoted as saying, in discussing the relations of parliamentary and other legislative representatives to their constituents, that "your representative owes you not his industry only but his judgment; and he betrays instead of serving you if he sacrifices it to your opinion." This was quoted by Daniel Webster in reply to the bitter and virulent criticism that swept over him throughout Massachusetts when he voted for the Compromise of 1850, including the Fugitive Slave Law. In other words, a representative is an agent and not a messenger boy, with the authority and right to use his own discretion, and the key to the success of representative government consists in the employment of political experts to express, with judgment and discrimination, the will of the people. It may be noted in passing that in the instance

cited Webster was proved by subsequent events to have been entirely wrong in judgment in this case.

Burke's dictum does not leave the matter in the comfortable situation that certain Congressmen might suppose. First of all, it presupposes absolute finality to the whole question by the subsequent judgment of the electors at the polls. This decision must be given fairly and squarely on the subjects of controversy without any complication by side issues. It is just here that the present-day machinations of politicians are most effective in clouding the situation. When, during the past decade, has any issue been placed before our people for a "yes" or "no" decision? Are not the campaign managers of both parties today busily engaged in "pointing with pride" to their own achievements or "viewing with reprobation" the general policies of their opponents, with careful evasion of specific promise or constructive judgment? In the second place, have the members of Congress in general voted according to their honest opinions and best judgment on such questions as bonus or tariff legislation, and that without evasion or hypocrisy? The whole matter is summed up in this question—are senators and representatives, when running for re-election, willing to rest their case fairly and frankly upon the judgment of the voters of the nation? Are they brave enough, and have they confidence enough in the righteousness of their opinions, to stand or fall by the popular verdict? Therein lies the crux of the whole matter of the success or failure of democratic representative government.

One of the most important means by which a real popular verdict may be secured is by the increase of party unity within a legislative body and the consequent responsibility that goes with it. In fact, as will be indicated in a later chapter, the author believes that what is most needed in all those departments of our government which have the duty of determining policy is more rather than less partizanship. The present problem is how to secure this. One possible and effective way would be to abolish the bi-partizan character of the committees of Congress and have them hereafter composed entirely of the members of the majority party. This suggestion alone is perhaps enough to cause the average senator or representative to fall in an apoplectic fit, and would be admittedly revolutionary in character, but it would force the minority to fight upon the floor, would bring out into the open the formulation and passage of legislation and also cause the party in control to bear the entire burden, good or bad, of the work of Congress. The effects of this move also could be augmented in a most beneficial and effective way by decreasing the number of members, say to about 300, by fixing this as a rigid limit to size and arranging the unit of apportionment accordingly. There is no doubt that the lesser number would legislate with far more promptness, efficiency and effectiveness, and there would be an enormous saving in the expenses incident to the support of a body of the present unwieldly size.

It assuredly would be the part of wisdom to increase in a marked way the pay of both senators and represen-

tatives, for we now give a salary entirely inadequate for the remuneration of men or women of the calibre necessary for the proper fulfillment of the position of national legislators. The present pay is not only entirely too small by virtue of the large increase in the cost of the necessities of life, but also the members of Congress now must give virtually their whole time to discharging the duties of their office. Heretofore, when sessions averaged only about six or seven months out of a year, it was possible for the congressmen to carry on their business or profession along with their official duties. Now they are practically prevented from doing this and are made entirely dependent upon their salary or else must be men of private means. This narrows the choice of the voters to individuals of the latter kind, and is hardly worthy of a nation that is so loud in its professions of complete democracy.

During the years of our national history we failed as a people to appreciate the need for the development of an adequate budgetary system as the financial basis for the conduct of our government, both state and national. Indeed the financial administration of the latter in particular was bad almost beyond belief. Not only was there no proper co-ordination between the executive and legislative departments in the process of raising revenue or making appropriations, but sooner or later there were approximately some twenty-five committees who laid the taxes and spent the proceeds, and this often without any special conference or co-operation. Some ten or twelve years ago, when there was a Republican Senate

and a Democratic House, it is reported that the respective chairmen of the most important finance committees of the two Houses were about \$125,000,000 apart in their estimates of the total of the financial operations of the government in one fiscal year. It is hardly an exaggeration to say that we as a people were content with a system of national bookkeeping, or lack of it, which would have wrecked a village grocery store in the backwoods of Arkansas, or a delicatessen store on the lower East Side of New York City.

✓ Soon after Mr. Harding became president, Congress passed the present national Budget Act, which has brought about signal reform in the financial procedure of the government. It is probable that this act will rank, along with the Federal Reserve Act of 1913, as one of the two most important pieces of constructive legislation since the Civil War. In fact upon the merits of these two measures will rest, in large part, the judgment of future historians in assessing the success or failure of both the Wilson and Harding Administrations. ✓ The Budget Act established for the first time in our history a budget bureau for the preparation of the budget; the House of Representatives created one large committee to handle all appropriations; ✓ the execution of the budget was placed under the supervision of a director-general, who acts under the control of the president; and also there was provided one central auditing agency.

This act passed Congress in April 1921, so that we now have the experience of a complete calendar year in

order to judge its actual working. According to the best information now obtainable it appears that from the standpoint of machinery and operation of the same, the budget system is working with fair success; in fact, to a better extent than had been feared by many of its best friends. The current budgetary legislation of the last (or Sixty-seventh) Congress, in a total budget of approximately three billion dollars, departed from the estimates of the budget bureau only to the extent of about one per cent of change. This was in large part due to the increase in the appropriation for rivers and harbors by about thirty million dollars; and which has been the subject of much criticism from the press and people.

The members of the Committee on Appropriations of the House of Representatives in general have made the reply that the above increase was largely due to a question of policy, and merely was a return to the estimates as made to the budget bureau by the army engineers, the bureau being responsible for cutting down the appropriation in order to reduce the amount of estimated deficit at the end of the year. In other words, it was a matter of judgment as to the relative importance of the greater or less speed with which we shall improve our ports and waterways in order to meet the demands of growing traffic. They added that the amount of real "pork" contained in the bill did not reach two million dollars. Of course this is a refreshing contrast to the annual forty to 'sixty millions of dollars of pork of various kinds which smelled to high heaven only a few

years ago, but after all, Congress should have realized that it was departing from the budget estimate along a most suspicious line, where any looting of the Treasury almost certainly would make its first appearance. For this reason the public criticism of the increase was more than justified and showed that some people at least were watching financial legislation and the policy of Congress in dealing with it. This same increase easily could prove to be the thin edge of the wedge that would split the whole budget asunder and reduce it to a mere farce. If Congress wants to spend more than appropriation bills call for, the only proper course for it to pursue is to offer separate acts of legislation, and not load the items upon regular appropriation bills.

When the budget is considered from the four cardinal points of preparation, passage, execution and audit, the summary of our experience up to the present time would appear to be as follows: The preparation is done with care and efficiency, and shows a large cutting down from first estimates with a successful attempt to balance income and outgo. When it is before Congress and the committees for passage the members of our national legislature more and more are coming to like and appreciate the system, for it is a great protection to them from their constituents who desire especial or class legislation for their own particular benefit. Also the general tendency is toward authorization rather than appropriation, and when appropriation does take place, to make it permissive rather than mandatory. This throws more and more stress upon the execution of the

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budget, and it is here that a strong and courageous director-general of the budget, with the active support of the president, can accomplish wonders. He can, and should be "on the job" every day in the year and, by always watching his estimate sheet, keep the details of receipt and expenditure well in hand. Furthermore, by the mere fact of this mastery of the details of our financial processes, he can be of inestimable help to the secretary of the treasury who, after all, shares with Congress the final responsibility for the right appreciation of our financial solvency.

Another encouraging feature in the new budget system is the provision for proper and unified audit. In fact, our national bookkeeping is at last becoming so efficient that as a nation we can afford to look the smallest business man in the face—a thing hardly possible until now. This alone is a most important step in the necessary attempt to bring business methods into the government, so long hoped for and so hard to realize. Although we thus can see marked progress during recent years it always should be remembered that eternal vigilance is the price of solvency and we have come so close to the "point of saturation" in levying our taxes that we no longer can permit with pardonable audacity the official to put his hand ever deeper into the tax-payer's pocket in order to make up a deficit.

Now that Congress has begun a policy of economy, it well can turn its attention next to certain of its own practices which are upon no basis of reason but well calculated to waste the tax-payer's money without any



excuse as to adequate return. First of all in this line of waste stands the Congressional Record, that compendium of useless information which is supposed to publish a truthful account of the business and debates of Congress from day to day, but often is filled up with all sorts of contributions, good, bad and indifferent, contributed to its columns under the excuse of "leave to print" and read only by those of the constituents to whom the individual congressman franks them and who in their ignorance perhaps believe that all these lucubrations are the verbatim reports of flights of eloquence that have resounded through the halls of the national capitol. The mere passage of a rule prohibiting the inclusion in the Congressional Record of any material except the exact reproduction of actual words used during debate or conduct of business should remove this disgrace, save large sums of money and restore the publication to its legitimate place as a truthful and accurate record of congressional procedure. Any student who has busied himself with research in recent American history is aware of the downward path of the Record in value and accuracy,—not to mention respectability.

Several years ago a member of the House of Representatives made war upon the abuse of the government printing office and the franking privilege by certain members of Congress. He stated on the floor of the house that "one of our Congressmen a while ago desired to have his name considered in connection with the governorship of his state, with the result that he conceived the idea of sending out a nice collection of

books to the voters of his state. He sent out 640,000 parcels of books in one day, and upon inquiry at the post office I found that the postage would have been to ordinary mortals forty-five cents each a parcel. It is a simple matter in arithmetic to see that 640,000 parcels at forty-five cents apiece cost Uncle Sam nearly \$300,000 for postage. Of course, the cost of the books themselves would be greatly in excess of this amount." He also mentioned the fact that a commission which investigated the amount of mail franked out by Congress in the year 1908 reported that in one year members of Congress sent out one-fortieth of the whole mail of the United States. This means that some 481 men, the number of members of both Houses according to the apportionment of that time, had sent out one-fortieth as much mail as the nearly ninety million people in the entire United States. Speeches, books and free seeds can mount up to a large sum in the end.

There is no question that the members of Congress should have the franking privilege, and its legitimate use is only a fair part of their all-too-meagre pay. The above abuses might be remedied with ease by a law requiring congressmen to affix postage stamps to all the mail they send out, but supplying these upon requisition of the individual member of either House. A strict account of the amount of stamps thus used by each member then could be kept and published by the authority of the budget bureau at the end of each year. This would guarantee the supply of legitimate needs, and end an inexcusable abuse. It is just such things as

these, "small" both in amount of relative cost to the country and in actuating motives, that have caused a most unfortunate lessening in popular respect for the United States Congress. And there is no doubt that these two Houses should rightfully take their places as recipients of a share in the dignified or theatrical, which we have seen to be so necessary a part of all governments. Finally the gradual loss in power and prestige on the part of the Senate has caused the House of Representatives to increase in relative authority and influence. It may be that we are about to see the United States hew more closely hereafter to the orthodox line of political development in democracies, and the more popular house become the predominant part of the legislative department, as in Great Britain, France, Italy and Switzerland. Most assuredly a process of self-reformation along the lines of unity and responsibility to party would enable the House of Representatives more adequately to meet and take advantage of any coming opportunity for legitimate and proper corporate aggression.



## THE IMPORTANCE OF THE JUDICIARY

THE position and importance of the courts in a constitutional government never have been described better than by Woodrow Wilson. He says<sup>1</sup> that "our courts are the balance-wheel of our whole constitutional system; and ours is the only constitutional system so balanced and controlled." Furthermore, "it is indispensable, alike for the preservation of the liberty of the individual and for the preservation of the integrity of the powers of the government, that there should be some non-political forum in which those understandings can be impartially debated and determined. That forum our courts supply. There the individual may assert his rights; there the government must accept the definition of its authority." Or, putting the matter in a different way, our courts maintain "that nice adjustment between individual rights and governmental powers which constitutes political liberty."

In order that our judiciary may be able adequately to perform the above important functions, it is necessary that the old doctrine of "separation of powers" be preserved with all the force of reason that ever was shown by a Montesquieu or a Blackstone. The problem of co-ordination or unifying the functions of the ex-

<sup>1</sup> *Constitutional Government in the United States*, pp. 142-3.

ecutive and legislative departments, as shown in a previous chapter, is primarily one of administrative law; the independence and integrity of the judiciary is a profound principle of our constitutional system.<sup>2</sup> Our courts serve as a stabilizer, to keep the ship of state upon an even keel and, while they often prevent the introduction of new political or social measures with the celerity and ease that sometimes are desired by ardent reformers and sincere idealists, yet they cause it to run close to the course of sound American principles which maintain that ours is a self-restrained democracy; that time must be given for the people to decide upon the basis of sound judgment and not upon that of mob psychology or transitory impulse.

It has become the fashion in late years for a certain school of radical thought, imbued with the European principle of complete subordination of the judiciary to legislative authority, to deny that the power of judicial review over legislation ever was intended by those who framed our Constitution. It would seem, however, that the best historical authorities today have proved that the above function of the courts was intended by the Constitutional Convention in 1787.<sup>3</sup> It is indeed but repeating a truism, in the United States at least, to say that "a people that would govern themselves wisely should seek to limit their own powers and to place restraint upon their own action in behalf of those prin-

<sup>2</sup> See Elihu Root, *Experiments in Government and the Essentials of the Constitution*.

<sup>3</sup> See E. S. Corwin, *The Doctrine of Judicial Review*, for an able discussion.

ciples which a careful and deliberate study of democratic government shows to be essential to its success"; in fact that "one of the prime purposes of constitutional restraints is to protect these fundamental rights against the tyranny of the people."<sup>4</sup> But a new line of attack is now made by those who call themselves "Progressives," probably because they protest against everything in general as well as in particular, and who point to the fact that many of the great decisions of the Supreme Court, and especially those dealing with the important matter of the constitutionality of various laws, have been decided by a vote of five justices to four. This criticism contains much of weight, at least on the surface and as a result it is gradually undermining respect for our supreme judicial tribunal—and with respect for the tribunal inevitably goes respect for law and order.

It would seem at first blush that a decision rendering null and void an act of Congress upon the word of just one man is hardly what would be expected in a democracy. The point always overlooked is that there are four other learned justices agreeing with this pivotal man and that the responsibility is shared by them all alike. Furthermore, the case in question usually is only one of a long series of decisions given from time to time during more than a century and often depending upon some previous decision or else enlarging its scope. It is by this means that the greatest legal systems, as well as the legal principles of common acceptance, have originated and developed to logical completion.

<sup>4</sup> A. B. Hall, *Popular Government*, pp. 158, 163.

One of the concrete forms in which this recent demand for a change has appeared is that which has as its objective the amendment of the Constitution so that it hereafter shall contain the requirement that decisions denying the constitutionality of an act of Congress can be rendered only by a two-thirds majority of the membership of the Court. This practically means a vote of seven to two if the Court remains of the present size. Of course the objection at once arises that if the Court be tampered with by any kind of constitutional change the door would be left wide open to other and more far reaching amendments that easily might involve the very integrity of our American institutions. In spite of the complaints heard some ten years ago that our Constitution was so rigid that it was impossible to change it and therefore, as mentioned above, that this same document was chaining down an advancing people and accomplishing their enslavement, it recently has been proved beyond question that changes may come with greater ease than possibly could have been imagined. This is instanced by the prohibition and woman's suffrage amendments. Of course, these various aspects of the matter should be weighed carefully before any action be taken looking toward a change in the position or powers of the Supreme Court and that aside from any partizan consideration whatever.

But there is an entirely different aspect to the question which is not always seen or understood by our people. Some fifteen years ago Woodrow Wilson pointed



out<sup>5</sup> the fact that of necessity, both from the theoretical and practical standpoints, our Supreme Court, as well as all other courts, ultimately had to follow public opinion. It may be said in further explanation that if the Court were too far behind it would become reactionary and would act as a drag rather than a balance. On the other hand, if it were too far ahead of prevailing opinion it would run the risk of choosing the wrong direction or lose the support of the people by outstripping their convictions. Therefore the excellence of the court depends in large part upon the ability of the justices to understand and evaluate the current state of development in public opinion and keep just abreast of it. Probably the only man in our history who could lead and formulate popular opinion judicially was John Marshall. Roger Brooke Taney tried it and fell into the error of the Dred Scott decision with the result that the Supreme Court did not recover its position of legitimate power and influence for nearly twenty years.

The lesson thus furnished is plain. When the Court decides by a five to four vote, the case at issue usually is a most contentious one in our public life and our people have not yet had the time or inclination to make up their minds upon it. For this reason and because the justices appreciate the uncertain or even balance of popular opinion their own views likewise and even unconsciously reflect this. Therefore a decision by such a narrow majority often may be more of a sign of the real

<sup>5</sup> *Constitutional Government in the United States*, pp. 171-2.

excellence and ability of the judges in hewing close to the line of real public opinion than that they are making an unfair, because nearly balanced, decision.

The courts of the separate states suffer under an especial difficulty due to the fact that the state constitutions which more directly control them, unlike the Constitution of the United States, contain much of the non-constitutional provisions discussed before; that is to say, those provisions that partake of the character of statute law rather than fundamental rules of government. It is impossible for any convention or legislative body to formulate legal provisions to the extent of a completeness that will obviate the duty of addition at the discretion of the administrative officials who enforce them. In the case of such provisions in a constitution, these rules also bind down the legislative bodies in making further additions to statute law since in the same way, as in administration, they must interpret the often obscure meaning of these same provisions in the mere act of legislation itself. But the acts and opinions of both executive and legislative powers are of necessity subject to the final decisions of the courts which also must, in their decisions, virtually add to or vitally change by interpretation upon the basis of other provisions in the constitution, the provisions in question. This results in placing an unfair burden upon the courts which are thus compelled in reality to legislate and are carried entirely away from their proper place and function in the plan of democratic government. The final result is that through no fault of their own, but fre-

quently on account of the binding force of legal principles originally intended to serve another purpose, they are compelled on the score of consistency to give decisions counter to current principles of social or political welfare, and also counter to the prevailing public opinion.

Theodore Roosevelt perceived this, and suggested the dangerous and destructive expedient of the recall of judicial decisions by popular vote. He did not intend that the recall should apply to all questions of court decisions but the inevitable result would have been its extension to all the results of adjudication. It would be difficult to imagine a more effective means to destroy the integrity of the courts or to take away from the people all respect for law. The proper remedy for the undoubted evil is the simplification of the state constitutions, removing the non-constitutional provisions and reducing them to mere statements of the rules constituting the state governments and their functions. This would remove the burden of legislation from the shoulders of the state judiciaries and restore them to their proper position and duties.

Another evil that now handicaps the work of the state judiciaries is the method of choice of judges. During the early years of our national history the state constitutions provided for the appointment of judges by the executive, following the precedent of the national Constitution, which itself follows the sound British tradition. In a great many cases, however, and due in large part to the influence of Jacksonian democracy,

many of the states changed to the system of popular election of the judges, and in one or two cases even placed their choice in the hands of the members of the state legislatures. As a result there has been a general deterioration in the capacity, or even character, of the judiciary in some cases, for it has been proved practically impossible to elect judges without the taint of partizan politics. In addition the people in general lack the capacity to choose those men most fitted to sit upon the bench. The old method of appointment, happily retained in our federal Constitution, has never been exceeded for excellence of choice and the fixation of responsibility therefore. Many of the states are showing signs of a return to the old and better method, and this alone is cause for encouragement among those who value the judiciary as occupying the high position assigned to it in the scheme of constitutional government.

As yet our people have not awakened to the need for the payment of adequate salaries to the judges, any more than to the same need for practically all other officials. The average judge receives the pay of a small town lawyer and an able and learned man must of necessity make a real financial sacrifice if he accepts the office. Fortunately for the country, and the continuation of the integrity of our courts, the title of "judge" carries with it generally a high social and legal prestige due to the old traditional Anglo-Saxon respect for law and its administration that we have inherited from our British ancestors. This has served as an added inducement to cause the lawyer of approved profes-

sional and financial success to make the necessary sacrifice and accept the office. Of course, this inducement is more apt to have effect if the position is due to appointment, and the potential judge is relieved from the necessity of undergoing a political campaign, not to mention in addition a possible pre-election struggle for the party nomination due to the direct primary.

The average foreign student of American institutions, even the British whose own institutions are descended from the same political and legal source as the American, cannot understand why our courts never have become politically dominant and the actual rulers of our country. They reason that such a power as that of declaring null and void, and virtually at their own discretion, any act of Congress or a state legislature, should be sufficient to place in the hands of the judges an autocratic and dictatorial authority well calculated to overthrow the power of all other departments or officials of the government. On the surface this would appear an ever imminent danger. But the mere fact that in theory at least our courts always must take a passive attitude toward the acts of the legislative or executive departments and never give an authoritative opinion upon these unless some definite application or provision of a law is brought before them in due course of litigation, hitherto has proved sufficient to prevent any judicial aggression along political or administrative lines. This assurance against trouble is added to by the old legal rule that "a law is a law until declared null and void," which prevents casual interference with the or-

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dinary and peaceful conduct of the affairs of government as conducted by the other two separate and equal "powers."

Finally should be mentioned the greatest evil of all in our legal system, and that is the cumbersome or faulty mode of procedure in our courts which has enormously increased both the delays and the cost of the administration of justice. Technicalities are permitted to be heaped upon technicalities and appeal upon appeal until a frequent result is the wearing out of the man of small means or influence, and the practical ability placed in the hands of the wealthy to persist to the point of securing a favorable decision.<sup>6</sup> Until these abuses are remedied through the simplification of procedure and of certain rules of law, and the poor and unfortunate are given equal opportunity in the courts with the more favored, there will of necessity be no end of a wide spread and righteous feeling of injustice and undemocratic favoritism. It is imperative that our people feel assured and confident of the reign of one type of justice for all.

<sup>6</sup> See an article by 'John M. Maguire in *Harvard Law Review* for February, 1923, entitled, "Poverty and Civil Litigation."

## VIII

### STATE GOVERNMENTS—GOOD AND BAD

ON a previous page<sup>1</sup> has been quoted the statement by Elihu Root that the loss of power by the states and the consequent centralization of authority in the hands of the federal government, is largely due to the failure of the states themselves, which are not alive to their duties. This extends to the fields both of administration and legislation. Of course it is easy to give numerous opinions regarding all sorts of incompetence or political dereliction, or what may appear to us as such, but there is no question that throughout the forty-eight states of our union there exists today among the people a great distrust of the competence and ability of the respective legislatures and in both houses. There is a general feeling that it would be a decided move for the better if the sessions of the legislatures might be less frequent,—especially in those states where there is an annual meeting of these bodies with the consequent politics of a rather cheap brand that invariably accompany them. A regular session every two or even four years, with special sessions at the call of the governor when necessity or crisis demands, would relieve the states from the flood of legislation,—good, bad and indifferent—that threatens to overwhelm them.

<sup>1</sup> p. 24.

There is one thing, however, that should be kept in mind, and that is that each one of the legislatures of our separate states contains a number of men and women among their members, who are of the highest ability, patriotism and of course honesty, who sacrifice their time, their leisure or even their business interests, in order to serve in these bodies. Indeed it would be difficult to imagine a more thankless public service, in times of peace, than that of membership in a state legislature. Unless one desires to use the office as a legitimate stepping-stone to a higher position, or for the political experience involved, there is no adequate return, but only hard and discouraging work, small pay, and the reception of an unusual amount of "mud," at the hands of enemies of a more or less questionable type, whose selfish interests the legislator inevitably must cross if he would place the welfare of the entire people above every other consideration.

As may be expected, the work of the legislature is not always a sum of very valuable service to a state. Thus it is a common impression that during the last session (1923) the legislature of New York passed little legislation of a really constructive character or of such importance that it could not have been deferred for several years. The leaders of the two great parties now seem to think that the necessity is placed upon them of following the adjournment by strong and widespread efforts to prove to the public that the "other fellow" was responsible for all derelictions from duty, and that one's own party is the only bulwark protecting



these same people from a complete collapse of law and order. But this story has been told so often that the citizens of the state are becoming skeptical and more inclined than ever to place the blame where it really belongs—and that is upon the narrow-minded leaders of both parties. But whatever the New York legislature failed to accomplish, at least it did not run so far counter to the American principle of home rule as to pass an act like the unfair and oppressive “Derrick Bill” of the Pennsylvania legislature, which prohibits such large urban communities as Philadelphia and Pittsburgh from enacting measures to provide for local “daylight saving.” But this does not reach the limit achieved by the legislature of Connecticut which actually passed an even more extreme law dealing with the same subject. In this predominantly urban state it was enacted during the 1923 session that “no person, firm, corporation, organization or association” shall display daylight saving time in public under penalty of \$100 fine.<sup>2</sup> It would hardly require a great stretch of the imagination to suppose that when any of the above natural or artificial persons may incur such a penalty this would transgress, in spirit at least, the fundamental constitutional protection against cruel and unusual punishment. The whole matter is so silly as hardly to be worthy of a discussion outside the limits of the country “towns” in Connecticut, so grossly over-represented in the state legislature according to the antique and outworn provisions of the present state constitution.

<sup>2</sup> See *The New York Times* for May 11, 1923.

Under the influence and emotional appeals of ignorant and self-appointed crusaders of the "fundamentalist" type, a number of the legislatures of the southern states recently have passed acts intended to prevent the teaching in the public schools of the theory of evolution or other matters of scientific importance under the plea of preserving the integrity of morals and religion. Such acts as these are not only far removed from the legitimate fields of legislative service, but also a direct menace to education and intelligence. They strongly remind one of the beliefs of George W. Cable's significant character of "Parson Tombs" in his clever novel entitled "John March, Southerner."

But the lowest depths of legislative ignorance and obscurantism are not yet,—at least judging from the standpoint of the person interested in the teaching of truth and sound patriotism as contained in American history. During the 1923 session of the New York legislature the Higgins Bill "to amend the education law, in relation to history text books" actually passed the senate but was mercifully permitted to die the indecent death it deserved before it went to final enactment, probably because New York state contains its proper quota of citizens with an abiding common sense. The text of this bill is worthy of preservation in at least the following paragraphs, which provided as follows,<sup>3</sup>—

<sup>3</sup> Printed in *The New York Churchman* of May 5, 1923.

ARTICLE 25-A

*History Text Books*

“680. Use of certain types of books prohibited. No text book shall be used or designated for use in the schools of any city, union free school district or common school district of the state which

“(a) ignores, omits, discounts or in any manner belittles, ridicules, falsifies, distorts, questions, doubts or denies the events leading up to the declaration of American independence or connected with the American revolution, or the spirit and determination with which the United States of America has established, defended and maintained its rights as a free nation against foreign interference, encroachments and aggression, or

“(b) ignores, omits, discounts or in any manner belittles, ridicules, falsifies, distorts, questions, doubts or denies the deeds and accomplishments of the noted American patriots, or questions the worthiness of their motives, or casts aspersions on their lives.”

It would be difficult to imagine the location of any person with the magnitude of intellect required to judge whether or not a book “ignores, omits, discounts or in any manner belittles, ridicules, falsifies, distorts, questions, doubts or denies,” unless a helpless public may look to the ranks of Tammany Hall or the present New York City municipal government.

But after all New York escaped the passage of this act, and it was left to the state of Wisconsin to cap the climax. Chapter 21, Laws of 1923 contains “An act to

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create section 40.36 of the statutes, relating to text-books used in the public schools," which is known commonly as the "Pure History Law." Section 1 of this act provides "no history or other text-book shall be adopted for use or be used in any district school, city school, vocational school, or high school which falsifies the facts regarding the war of independence, or the war of 1812, or which defames our nation's founders or misrepresents the ideals and causes for which they struggled and sacrificed, or which contains propaganda favorable to any foreign government." The rules for the administration of this provision are also prescribed and require that "upon complaint of any five citizens filed with the state superintendent of public instruction" that any history or other text-book in use contains any matter thus prohibited, that official "shall fix a time for a public hearing upon such complaint, which shall not be more than thirty days from the date of filing said complaint, and shall be conducted either by the state superintendent or the assistant state superintendent, or by one of the state inspectors of schools, to be designated by the state superintendent, and which hearing shall be held at the county seat of the county where the complainants reside." If the official finds that any text-book contains matter thus prohibited he shall make note of such finding in the list of authorized texts published and transmitted to local officials annually by law, and no superintendent, school-board or other local authority may use any text thus black-listed under penalty of losing the public funds provided for the sup-

port of the school. The *American Historical Review*<sup>4</sup> points to the fact that "literally construed and intelligently and justly executed, the law is harmless. . . . But we all know what is meant. No one can miss the significance of the fact that, under this law, you can say what you please about the war with Mexico or the war with Spain, but must not 'falsify the facts' (i.e., modify the sacred one-sided tradition) regarding the two wars with Great Britain. Truly, 'the hand of Joab is in all this.'"

When we turn from this depressing story of legislative incompetence and ignorance we naturally again question the causes of the difficulty. Of course these are many and various, but several stand out predominant and are general in their application, although local conditions are accompanied by local peculiarities and weaknesses, as in the cases of the New York and Wisconsin legislatures, where racial prejudice on the part of our immigrants from certain countries has a strong, but it is to be hoped transitory, influence. It would seem that first of all in importance should be placed the fundamental mistake in the inclusion of what is properly statute law in the constitutions of the various states, in the form of non-constitutional provisions discussed in a previous chapter.<sup>5</sup> These are direct derogations from the legitimate power of the legislatures, and are intended so to be, but by thus reducing the authority of these bodies there is simultaneously taken away the

<sup>4</sup> July 1923, pp. 699-701.

<sup>5</sup> See Chapter III.

natural inducement for any able and intelligent man or woman to serve in them. A person is not apt to face the task of hard and difficult public service, with little or no prospect of return in the form of accomplishing something concrete and effective for the general welfare. The same results are to be found in the increasing vogue of the initiative and referendum in legislation, which also proportionately reduce the authority and responsibility of legislators. Here is the point where both the cause and effect of lack of popular confidence increasingly are seen. It is only a truism to remark in this connection that if our people are not competent to choose representatives to legislate for them they are most certainly not competent to do their own legislating for themselves by means of a popular vote. It would seem that every argument against representative government should also be an argument against this so-called "direct" government.

As may be expected, lack of adequate pay and unusual opportunities for the acquisition of "graft" are a discouragement to the honest and able, and an inducement to those "otherwise" endowed in character or intelligence. Furthermore, many of the legislatures are of inordinate size of membership and a drastic reduction in this particular would increase both responsibility and prestige among the smaller number. In other words, when opportunity is given for real, effective service of the public, and an appeal is made to the heroic spirit in each and every human being of sound mind and character, the response is invariable. For these reasons it is

my own belief that an increase in authority and legal power, larger pay, and the consequent opportunities for actual unselfish service, will be of striking effect in increasing both the intelligence and the character of the membership of our state legislative bodies.

Added to this must be increased party unity and co-operation under adequate leadership. And it is my belief that here also, as in the like case of our federal government, the proper leadership must be found at the hands of the executive, in other words, in the governors of the respective states.

But if the governor is to become on a somewhat restricted scale a prime minister of the people of the state as well as a party leader, the process of realizing this much-desired consummation will be found more difficult than in the analogous case of the president. The latter is *the* national executive, since according to the sound provisions of the Constitution of the United States all executive and administrative authority is centralized in his hands or in those of his appointees. That is to say, the people elect one man as national executive, while such is not the case in the majority of the states. Taking New York, the most populous commonwealth, as an illustration it will be found that the state executive consists of seven men. These officials, serving as the result of popular choice are the Governor, Lieutenant-Governor, Secretary of State, Comptroller, Treasurer, Attorney-General and Engineer. Of these the governor is merely the most important of a commission of seven. All are elected by the people by direct

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vote, and responsible to the electors alone—which means little or no actual responsibility, since if one of these officials is derelict in his duties it is difficult or impossible to call him to account in any effective way. The process of impeachment is almost never used, because the legislature naturally will hesitate to impugn the popular choice by bringing to account an individual who owes account primarily to the people alone, and also for the reason that comparatively few among the electors have the time, interest, or even in some cases intelligence, to follow with consistency the official actions of any one among seven individuals in office, unless it be the governor himself. As a matter of fact the average citizen of the state not only is ignorant of the names of the other six officials, but usually votes for the governor by choice and the others by party designation.

The efficiency of the government of New York, not to mention the publicity and democratic character of its administration, would be immeasurably increased if the useless political appendix of lieutenant-governor were done away with, and the other six officials, or at least all with the possible exception of the comptroller, were appointed by the governor. The comptroller might be either elected by the people, or chosen by joint session of the legislature, for the reason that it is advantageous to have some official, who draws his authority from a source independent of the governor, have an oversight or auditing power over the finances of the commonwealth. As indicated in the previous chapter, the judiciary should be appointed by the governor, and all these



important officials be subject to ratification at the hands of the state senate.

This is the case with the government of the state of New Jersey. The electors choose only one state official, the governor, and he appoints practically all the other members of the state government, with the exception of the treasurer and comptroller, who are chosen by the legislature in joint session and have general oversight over the state finances. The governor appoints the secretary of state, the attorney-general, the justices of the Supreme Court, chancellor, judges of the Court of Error and Appeals and the judges of the *inferior* Court of Common Pleas, also all other officials whose appointments are not otherwise provided for by law, and in all cases subject to ratification by the Senate. It is interesting to note that the judges of the Court of Common Pleas are elected by the legislature in joint session. At once it will be seen that great power and responsibility are centered in the governor, and the efficiency with which the state administration is conducted at the hands of an able executive is ample proof of the soundness of the theory upon which New Jersey has built its constitution.<sup>6</sup>

A decade or more ago Woodrow Wilson, when elected as a "reform" governor of the state, was able to accomplish in the two years of his administration, before he resigned to assume the duties of the presidency, a remarkable amount of the platform promises upon which

<sup>6</sup> See *Constitution of New Jersey*, Article VII, sections 1 and 2 for complete text.

he was elected, and this in spite of the active and powerful opposition of the political chiefs both in his own and the other party. This was due to his constitutional authority, his use of the patronage, and his appeal to the people of the state over the heads of a recalcitrant legislature. Almost at the same time Charles E. Hughes, twice elected governor of New York by somewhat the same type of reform movement within the Republican party, in spite of active and strenuous endeavors was able to accomplish in three years far less than did Mr. Wilson in New Jersey. He had not only the opposition of the legislature to overcome, but also at times that of the other members of the executive who, both on account of political and personal reasons honestly held, refused to support Mr. Hughes in his efforts to carry out his political program. The difference between the two men was not so much that of method, for both in many cases used the same means of direct appeal to the people, but was due in great part to the relative position of the office of governor according to the constitutions of New York and New Jersey.

The similar success of such governors as Cleveland and Roosevelt of New York, Harmon of Ohio, Baldwin of Connecticut, Aycock of North Carolina, Allen of Kansas, and Johnson of California, to mention but a few of the outstanding illustrations, shows the possibilities of the office and the fact that the people of this country, no matter what the section or party may be, admire courage and vigor, and are always ready to respond to strong and appealing leadership. This is

one of the reasons why so many of our presidents and presidential candidates have been taken from among the governors of the states, where their type of experience has not only fitted them for the larger and more exacting office, but also given them the position of advantage from which to appeal to the rank and file of the voters and capture the popular imagination. And their initial success in their own states has depended in large part upon the greater or less degree to which the principle of the "short ballot" has been in vogue,—that is to say, where the electors choose but one or two officials, and the appointment of the others is left in executive hands.

It may be said that the secret of this peculiar success is well shown by the fact that the British seem to make no difference in their use of the two terms "politician" and "statesman." Every statesman must be a politician in order to secure office, and every politician must be likewise a statesman in order to retain it and remain in power. We in America expect the executive official, whether president or governor, to act the part of statesman and assume the consequent responsibility. The power, however, only too frequently remains in the hands of the politician, or boss, who fills no office and practically is responsible to no one outside of the regular political machine. And this latter, only too often, is the boss's own creation and acts as a convenient buffer between him and the more or less complacent electorate. We must unite these two functions, as in Great Britain, and either make our office-holders political leaders or

even bosses, or else put the bosses in office. In either case we then will have the necessary unity and centralization of power and responsibility in the same hands. It is probable that in future we shall have reform and efficiency in our governments, both state and national, almost in the exact proportion that our people realize the necessity for this, and act upon it.

I feel that in closing this discussion I can do no better than again to quote Theodore Roosevelt, who so keenly appreciated the need for this type of political development. In his "Autobiography"<sup>7</sup> he discusses the point as follows,—“that device of old-school American political thought was the desire to establish checks and balances so elaborate that no man shall have power enough to do anything very bad. In practice this always means that no man has power enough to do anything good, and that what is bad is done anyhow. In most positions the ‘division of powers’ theory works unmitigated mischief. The only way to get good service is to give somebody power to render it, facing the fact that power which will enable a man to do a job well will also necessarily enable him to do it ill if he is the wrong kind of man. What is normally needed is the concentration in the hands of one man, or of a very small body of men of ample power to enable him or them to do the work that is necessary; and then the devising of means to hold these men fully responsible for the exercise of that power by the people. This of course means that, if the people are willing to see power misused, it will be

<sup>7</sup> pp. 170-1.

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misused. But it also means that if, as we hold, the people are fit for self-government—if, in other words, our talk and our institutions are not shams—we will get good government. I do not contend that my theory will automatically bring good government. I do contend that it will enable us to get as good government as we deserve, and that the other way will not.”



## PARTIES AND PARTIZANSHIP

THE thought underlying this entire discussion is that a democracy, no matter what the form of government may be, must be based upon a constitution (or definite understanding between government and governed), written or unwritten, in order to be successful. But a constitution merely provides for the formation of a machine and the method of its political functioning. There must be some force to make it go. A person may go to the Baldwin Locomotive Works and buy a railroad engine of the latest and most approved type; it may be adjusted and oiled to perfection, and then placed upon the rails; but it can stand there until ages have passed or it has rusted to pieces and never move an inch for lack of steam. Now public opinion is the steam that makes the machinery of democratic constitutional government go, and the political party is the instrumentality through which this opinion is crystallized or sometimes even created, and made effective as motive power. Therefore parties are a necessary part of democratic government and, no matter how faulty their working may be, they must be accepted and used for the present until we have invented something better,—and of this last there at present would seem to be little probability.

To quote the more technical language of René Brunet,<sup>1</sup> "the political party is a political means not only indispensable but fecund and perfectly rational. Its essential function is to transform isolated volitions into a collective will of the ensemble. . . . The tendencies of individuals, chaotic as they may be, change completely in nature when they are joined to equal or similar tendencies of many other individuals. From the contact of these vague and troubled impulses there springs forth the conscious and clear collective will." Professor Charles E. Merriam likens a party<sup>2</sup> to "a huge sieve through which the competing types of personnel are sifted and choices finally made." The party also "sifts and tries proposals for public action or policy." But I desire to stress the fact that parties are valuable not only in order to accomplish the nomination of candidates and their elections, but also after an election, in order to afford the corporate responsibility necessary to make effectual the carrying out of pre-determined issues or policies. Here is the exact point where reformers and other amateur politicians fail so completely. It is very easy to be a reformer for two weeks before an election and about two days thereafter. But the newly elected officials, no matter how sincere and idealistic in their motives and aims, must have the united support of a political organization while in office, and also this organization must share in the responsibility for the poli-

<sup>1</sup> *The New German Constitution*, p. 102.

<sup>2</sup> *The American Party System*, pp. 391, 393.



cies followed by the administrative and legislative departments.

Some ten years ago, in a spasm of virtue, the people of Philadelphia elected Rudolph Blankenburg mayor, —one of the highest types of independent, courageous and honest citizens. They neglected, however, to pay proper attention to the election of a city council pledged to support him. The result was that Mayor Blankenburg was compelled, entirely against his will, to go to the political bosses who controlled the council and make regular deals with them in order to accomplish the ordinary routine work of the city government. For this reason there was much criticism of the mayor, who was not in the least to blame for this condition, but was compelled to work with the political tools at hand. In comparison with this, the independent forces that caused the election of John Purroy Mitchel to the office of mayor of New York, were better or more practical politicians. They caused the nomination of Mayor Mitchel at the regular Republican primaries, and also by an independent Democratic organization formed for the purpose; and at the same time nominated and elected a majority of the members of the board of aldermen who were pledged to the support of the mayor and his policies. The result was one of the most brilliant administrations in the history of American municipalities, for the city enjoyed the good fortune of the choice of probably the ablest man who ever has been mayor of New York, and the co-operation of an unified and responsible political organization.

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The lesson is plain. Since parties are necessary and inevitable, it is best to recognize the fact and work through and within them for good government and efficient administration. Herein lies the key to successful political reform and progress.

The best and most successful system is that of two main parties, operating upon a national scale, so that in the nation or in any smaller political division there may always be a possible party in power and a party in opposition. Among the most advanced countries and the most successful in self-government are those of Anglo-Saxon or British institutions and foundations. These would include Great Britain, the self-governing commonwealths such as Canada, Australia and New Zealand, and of course the United States. All of these have inherited the British tradition of two parties, which goes back to the time of the Revolution in 1688, and the Whigs and Tories of the intervening period for its origins.<sup>3</sup> At that time people were members of these two parties on account of religious and political convictions of the deepest character, and did not change their politics, which meant the most fundamental views on religion and government, for light or trivial reasons. The Thirteen Colonies inherited this system, and it was not by accident that the party of the people at the time of the American Revolution was called Whig, and those who supported the King were known as Tories. It was a transference of British politics to American soil and our

<sup>3</sup> See the brilliant discussion of this development in Henry Jones Ford's, *The Rise and Growth of American Politics*.

War of Independence never can be understood unless it is remembered that in fact it partook of the character of a British civil war.

The success of the patriot cause resulted in the destruction of the Tories and the Whigs triumphantly formulated the Constitution and put the government into effect. Washington and his colleagues in the executive and legislative departments of the national government at first substituted the unifying effects of personal prestige and leadership and the loyalty of the people to themselves as a makeshift for parties, but within the first decade after the start of the government the people followed their old tendencies. They split into two groups that soon became crystallized into the two party system that has prevailed, with few breaks of regularity, ever since that time. On the one side were Washington and Hamilton who believed in a centralized government and a loose construction of the Constitution in order to effect it. On the other side were Jefferson and Madison, who believed in state's rights and a strict construction of the Constitution in order to retain for the commonwealths every ounce of political authority. These two tendencies are alive even today, though in a somewhat modified form. The Republican party still leans toward nationalism, and the Democratic party toward the stressing of locality, as the most important basis of action and interest. It is hardly an exaggeration to say that it was natural for the Republicans to fear and oppose the League of Nations, for they instinctively shrank from any seeming derogation from the authority

and prestige of American nationality, while the Democrats as a class, being less jealous concerning the possible safety of national institutions as distinguished from those of the remainder of the civilized world, were much more willing to take the required risks and adopt the League of Nations covenant. The same underlying reasons or tendencies account for the fact that in the long run the Democrats have been more often for a lower protective tariff or one for revenue only, and the Republicans have been intent upon building up a strong national system of manufacturers and commerce based upon a high protective tariff. Various men and even sections of the parties may wander astray for awhile, but sooner or later they swing back to their old desires and the political traditions from a long line of inheritance.

There is a multiplicity of parties in the democracies of Continental Europe, where self-government is of newer origin and form. Ministries must be made up of combinations or blocs of these different factions, and a lack of unity and stability of administration is the result. It is said that there were altogether fifteen so-called parties in Italy during the few months of 1922 preceding the Fascist Revolution, and one of the main objectives of Mussolini's remarkable and able administration has been to break up the disintegrating and particularistic tendencies of Italian politics, and substitute therefore a strong, united party of national domination and influence.

It is difficult, in the United States at least, to form

third parties and such movements invariably have ended in the death of one of the older parties, as when the Republican succeeded the Whig, or else the regular absorption of the "third" party in one of the two old ones. Furthermore, President Lowell points out<sup>4</sup> that the presentation of a third candidate or party issue frequently falsifies the result of an election by preventing the choice between two definite alternatives. For this reason it is a healthy tendency on the part of the people to stick to two parties, and work out their political salvation upon this practical basis. This does not mean that the system always or even often works in an ideal way. It is the object of political leaders to carry elections by hook or by crook, and consequently they will evade whenever possible any specific statement of issues in order not to alienate any voters or sections of them. This has caused the deterioration of platforms and platform promises to the present state of indifference or even of contempt.

President Lowell also tells the story<sup>5</sup> of a passenger who went out on the platform of a Pullman car while the train was speeding and was told by the porter that he could not remain there, but must go inside of the car. "Why, so?" asked the man. "Because," replied the porter, "it is against the rules to stand on the platform." "But I thought a platform was meant to stand on?" "Oh, no, Sir, a platform is not meant to stand on. It is meant to get in on." This adequately describes the at-

<sup>4</sup> A. Lawrence Lowell, *Public Opinion in War and Peace*, p. 150.

<sup>5</sup> *Ibid.*, p. 191.

titude of politicians and political parties with regard to platforms and party pledges, and also explains much of the confusion and suspicion among our citizens at the present time. They feel an utter lack of confidence in both the executive and legislative branches of our state and national governments, and with good reason, for there is little guarantee that our officials can or will act in any form of loyalty to specific platform statement or promise.

In general, party platforms are a collection of high-sounding and bombastic statements asserting little, but with a tone so positive as to be almost laughable. They are made broad enough to include the interests of people of actually opposite views, the idea being to get votes upon any terms and trust to popular forgetfulness when it comes to "delivering the goods." This evil has long been recognized and was met in a clever way by ex-President Wilson at the time of his candidacy for a second term. Being reproached in 1916 with the fact that the Democratic party had gone exactly counter to its pledges in the 1912 platform with regard to Panama Canal tolls he intimated at the time of his renomination that platforms were not definite programs to be followed to the letter but statements of ideals and aspirations and to be used as a general guide to broad policies. Of course there is some measure of truth in this, but our people are now weary of the indefiniteness or even double-dealing on the part of politicians and are demanding specific statement and real performance. The party that accomplishes these latter things will win

the confidence of the voters and be successful in the end. Undoubtedly conformity to platform pledges will be an issue in coming campaigns and it is significant to note that a movement to make it so can be seen in widely scattered parts of the country. Especially the new voters among the women, who are rapidly organizing themselves into political clubs, are making party pledges and platforms their own distinctive issue and they have the votes to make it effective. All this is well illustrated by the significant remark of the late Charles J. Bonaparte that,—“the rulers of a great nation, like all other men in all other stations and callings, if they would escape disaster must be guided in their policies not by vain dreams, not by empty visions conjured up through wilful self-deception, but by the truth.” He also added at another time that “our politicians are very cowardly, and timidity to some extent takes the place of conscience with them.”<sup>6</sup>

There is imperative need at the present time that our people as individuals understand the importance of taking part in politics. Every voter should make it his or her duty to vote at the primaries, wherever the direct primary by law is established, and take a proper share in the choice of party nominees and the determination of party platforms. But a person should “go into politics” not in order to get something out of it, for it is the last place on earth to go for that purpose, but in order to put something into it. And that something means careful thought, study, and the expenditure of much

<sup>6</sup> J. B. Bishop, *Charles Joseph Bonaparte*, pp. 202-3, 206.

personal time and effort,—not to mention money. This duty of political service is the great individual sacrifice of peace times. Furthermore, it is a very dangerous thing for a person to accept elective office, unless that person has some private means of support or at least enough for the necessities of life. Mr. Roosevelt stressed this by saying—"I do not believe that any man should ever attempt to make politics his only career. It is a dreadful misfortune for a man to grow to feel that his whole livelihood and whole happiness depend upon his staying in office."<sup>7</sup> On the other hand if a person remembers that no army can exist without enlisted men, but needs them even as much as it needs officers, it will be understood that the great difficulty in practical politics comes from the fact that all active participants usually desire to be officials, and the private voters are sadly lacking. Here is just the point where the individual voter of patriotism and honest convictions comes in.

It stands to reason that there must be leaders to coordinate, direct, and take the responsibility for party action. As maintained on a previous page,<sup>8</sup> the regularly elected office-holders must do this, or else we must have bosses. In some cases, therefore, there is absolute need of these latter, due to the indifference or inefficiency of those from whom such work is rightly to be expected. According to the acute observation of President Lowell, the "function of the broker is as needful for political

<sup>7</sup> *Autobiography*, p. 55.

<sup>8</sup> See Chapter VIII.



as for commercial life, as proper and as honorable." He adds that the difference between the legitimate and necessary political leader, and the boss of unsavory or harmful character, is that the brokerage "is not confined to formulating public opinion, but degenerates into a traffic in public measures without regard to any public opinion on the measures themselves, or into a traffic in private legislation and in appointments to public office." In short, the boss is primarily a broker "who deals in private benefits, not in public opinion."<sup>9</sup>

The professional party workers or politicians, especially those who have no visible means of support, must be rewarded with offices or even by direct money payments for their services and, while this may be perfectly legitimate, it offers extensive opportunity for the spoils system of the worst type, which finally degenerates into actual "graft." The easiest way to support the party workers is by the bestowal of office, but often the supply of the latter runs short. Then occurs what Charles J. Bonaparte describes as taking place in Maryland, when "it had been a source of great difficulty for the statesmen to find titles for the employees. They called them doorkeepers, but there were so many more doorkeepers than there were doors that they had to have their assistants and second assistants and deputy doorkeepers. I believe they had a flag raiser who was paid five dollars a day for raising the flag, no other employee being able to spend the five minutes necessary

<sup>9</sup> A. L. Lowell, *Public Opinion and Popular Government*, p. 64.

to do that; they also had an assistant flag raiser who was to look on while the flag raiser raised the flag."<sup>10</sup>

When the supply of offices and money legitimately collected runs short, there is the added temptation for graft. In speaking of the past extent of this system, Professor Merriam includes in the term "grafters"—"all those who were willing to accept the advantages of social inheritance, and assumed none of its responsibilities; or who took more than they gave. In business, in labor, in politics, an underlying spirit was often seen, shifting to others the heavy burdens of social responsibility, refusing the labor of democratic co-operation in the great fellowship of democratic society."<sup>11</sup>

Whether or not we go to the extreme of this definition, at least there is no doubt that "grafting" is not confined to politics, but exists wherever there is habitual acceptance of profit or favors at the expense of someone else, and with no adequate return for the service or favor rendered. Most politicians distinguish between two kinds of graft: "honest graft," which means the accepting of favors and influence but no financial dishonesty, and plain "graft," which usually should be connoted with theft. Fortunately the latter kind is probably rare in our present experience, at least to any widespread extent, but the former is the curse of our public life today. And it is exceedingly difficult in many cases to know where to draw the line. This can only be left to the individual conscience in most cases, provided

<sup>10</sup> J. B. Bishop, *Charles Joseph Bonaparte*, p. 185.

<sup>11</sup> C. E. Merriam, *American Party System*, p. 198.

there is a healthy and self-respecting public opinion extant among our citizens.

Politicians in general are just like other people,—good, bad, and indifferent, and they are apt to be just what the people expect them to be. It is easy to criticise, and the average voter does not stop to think that the good official needs the support of the honest and sound elements in our population in his efforts to give good and efficient, not to mention honest, administration and service. The bad or corrupt politician does not need this, since he has plenty of tangible means of support through more or less devious ways that do anything but conserve the interests of the community. Public office, rightly and honestly administered, is but a thankless job at best, so far as the majority of cases are concerned, and it is not amiss to apply here the old pedagogical principle used by good teachers that it usually is possible to get better results from a student by praising, than by continual fault-finding and criticism. It is only human to give the type of service that is expected. While there must be no hesitation in giving reproof and punishment, yet the kind or encouraging word goes a long way and is a vital and effectual help.

It is the habit of many well-meaning and sincere people to brag that they belong to no party but are “independent,” making a complete confusion in the relative meanings of the terms non-partizan and independent. It would seem that a “non-partizan” is one who belongs to no political party because of lack of conviction, or else in order to evade the duty and responsibil-

ity of party service. This does not necessarily imply independence, but perhaps a slavish subjection to an attitude of fault-finding with the added luxuries of gossip and criticism. The better and more logical plan is to belong to a party, and work within the organization for the good of the country. On the other hand, the good of the party never should be placed first, for it is only a means to an end. When a party does downright wrong, or fails either in its nominees or platform to meet the conscientious convictions of the voter, then is the time to be independent. He should bolt and vote for the opposite candidate or support the opposite policy in the specific instance, always remembering that in politics one must get the best practical thing under the circumstances, but without sacrificing principle. Thus it will be seen that independence and partizanship are not by any means mutually exclusive terms, but more often may be found to go together in the attainment of what is the best and the most efficient in the long run.

If it is true, as here maintained, that party is an important and necessary agent for the administration of democratic government, it should be used and supported intelligently and not merely disintegrated and condemned. And independence and non-partizanship, so called, are often the excuse for laziness or civic cowardice. The intelligent, not to mention the decent and respectable, man and woman should remember the fact that the ignorant, the depraved, the criminal classes, the inhabitants of the "red light districts" and the denizens of the brothels, all vote, for it is seen to

that they do so by the corrupt ward heeler or other politicians of the worst type. And they look after the morons too. Therefore upon the active, intelligent participation of our better and more educated men and women depends in large part the success or failure of the working of political institutions. Mere law or machinery will not do, but there must be the intelligence and brains behind them to make them function with honesty and efficiency.

This is seen very clearly in the actual working of the direct primary, or the method of nomination of party candidates by the vote of the people themselves. Probably no reform was hailed with greater joy than this by the advocates of clean and responsible democratic government. Theoretically it is perfect but it must be confessed that in its actual working, during the past ten years in which it has been in rather general acceptance, it has not been altogether a success. In many cases, where there has been an awake and intelligent interest in its use, the direct primary has caused a vital and outstanding change for the better, but it also has allowed the corrupt bosses and party leaders to use the machinery of direct nomination as a screen for the choice of poor or even incompetent candidates. When any criticism is raised against the primary nomination, the answer is that this is the "choice of the people," and there is no gainsaying the fact except to point out that the professional party workers and their henchmen always vote at the primaries, while the "good" citizens generally do not, except under exceptional circumstances. In

the latter case, they get what they want, and in other and worse cases, what they deserve.

Several years ago, in one of the counties of New Jersey, an ignorant man of small intelligence decided to run in the party primaries for the nomination for the state legislature. The party leaders did not take him seriously, but put up candidates of ordinary ability, and let things "slide." The self-appointed candidate issued and printed the following election manifesto and sent it around the country. It is given here verbatim and entire, in order that the intellectual capacity of the candidate may be judged.

#### TO THE VOTERS OF ——— COUNTY

I, ——— of ———, New Jersey, the Democratic Candidate for Assembly of ——— County. As you know the Campaign that I am waging, is one for Personal liberty, and the Preservation of our Constitution rights. The Daylight Candidate what I am in favor of Just an Equal rights for all, a Privilage Sunday, go to Parks, Church, Moving-Pictures, Ball Games, trolley or automobile riding. do as you please in a respectable way. Meeteng or enjoyment, I am also is favor of Hotels and respectfull saloons, that liquor, wines, beer, tobacco may be sold, and giving the public in a business way home comforts of both boards and beds and free comforts to the public, and helping to reduce the tax rate by its revenues paid in to the city tax offices. I am also in favor of traid unions, opposed to lock outs or strikes, all grievencies or' disputes chould be arbitrated in a cool and fair way, with the war over the United States

has become the greatest nation of the whole world in a business way as the export trade of this country is becoming gigantic, hence capital and labor in a very short time will become Consolidated in a business way to make our business houses, and the great manufacturing plants of America much greater in the future than in the past. I am also in favor of an eight hour day, as it will build a nation of making it stronger and much healthier, furthermore it will give the great number of toiller of America time for resrecreation and education, and then toillers of the great factory plants will become more vorst and skilled and a greater production will be turned out then, than in the present way of business. I am also in favor of goods roads, free and safe bridges, state canal, deeper waterways, equal taxation, schools of the very best, parks and play grounds, good fire and police departments and that these two departments along with our hospitals State Institutions shall allways have a fair and just consideration by the people of New Jersey. Safeguarding there interest that will prove to be a blessing to the people as a whole. In what I have stated to the public if you heartly concern with me in the above statements than I ask your heartly co-operations by supporting me in the coming primery elections for denomination for Assembly of \_\_\_\_\_ County by going to the pooles and supporting me on primary day with out fail.

Yours very respectfully,

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\_\_\_\_\_, N. J., residence  
88 \_\_\_\_\_ Avenue.

To the astonishment of the political leaders, this man was able to appeal to the rank and file of the party voters and on the above silly statement, to an extent sufficient to defeat one of the regular nominees, who had the support of the "organization" and of the intelligent voters, and to win the nomination. He at once followed this success with the additional manifesto which also was printed and circulated around the country.

## DEFEND YOUR PERSONAL LIBERTIES

*vote for*

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### DEMOCRATIC CANDIDATE

for Assembly of ——— County at the coming elections  
 Against prohibition in favor of hotels for the comfort  
 of the public its revenues will keep down the tax rate  
 add thousands of dollars to the city treasury fund.  
 Against excessive zone carfare in favor of a privileged  
 Sunday, go to park, church, golf, ballgame, moving-  
 pictures trolley or automobile riding. Do as you please  
 in a respectable way for just protection of organized  
 labor. For jobs for soldiers and sailors. The state legis-  
 late should compensate all soldiers and sailors of the  
 late war, as their pay was so small, put life at stake at  
 the battlefields while thousands of the stay homes made  
 fortunes, the state of New York and Pennsylvania made  
 laws that had compensated their braveaduce of the  
 great war and New Jersey should do likewise, in favor  
 of state canal deeper water ways, good roads, free and



safe bridges, good school, parks, playgrounds, just consideration of fire and police forces and state institutes, in favor of an eight hour day the world over for the millions of tired and faithful toilers that they may have time for rest and recreation and education, if my thoughts are your thoughts vote for me on election day, and have your friends do the same, as your friend for public office equal taxation for all. Don't fail to support me.

When election day came, this man ran slightly behind the other legislative candidates on his party ticket, and was defeated only by about 3,000 votes,—and that in a large and populous county.

Within the past decade the Democratic voters in the Borough of the Bronx, New York city, marched manfully to the polls (it was before the days of woman's suffrage) and nominated a dead man for office. The candidate had died three weeks before, but after the official ballots had been printed, and the voters were not aware of the fact. Also in Massachusetts, on one occasion, the printers are reported to have placed a typographical error in the Republican column. This "error" was elected to office by the voters of the district. If all the other political "errors" elected to office in this United States were only as innocuous in character, it would be a happy consummation for the government and devoutly to be wished.<sup>12</sup>

<sup>12</sup> "A few states have deemed it necessary to ordain that lunatics are not eligible for state office, a precaution which seems to indicate a certain lack of confidence in the discretion of the electorate." Herbert A. Smith, *Federalism in North America*, p. 58.

It would seem that one thing is certain,—either our people must be aroused to the necessity of an active participation in the direct primary, or else it should be done away with, and a return to the old system of the nominating convention be made. In the convention the political bosses and other leaders at least had to take the responsibility for the nominations that were made. Now they can avoid it by the direct primary if the people do not wish to take any part, or refuse to call them to account. If the proof of the pudding is in the eating, the latter has not been according to the taste of those who desire honest and efficient administration of government. The present question is, and it still remains unanswered, will the people as such wake up and use the direct primary with efficiency and intelligence?

## THE ORGANIZATION OF THE AMERICAN GOVERNMENT AND THE CONDUCT OF WAR

THE experiences of the United States and its people during the course of the recent world conflict have created a new interest in the problem of adapting our government to meet the necessities of war. In olden days, a war usually was the affair of government officials and the armies in the field, or perhaps in addition the navies upon the high seas. Thus in the Seven Years War, which was fought in the American colonies under the name of the French and Indian War, the people were but little disturbed, with the exception of those living along the frontier. This was the reason it was so difficult to arouse the people living away from danger and induce them to appropriate money or raise troops for a campaign. They had not been troubled, so why should they exert themselves or practice any self-denial when those nearer at hand could take the responsibility and bear the danger? Thus a war in those days merely touched the surface of the every-day life of a country. Today, it is a matter of embattled peoples and involves military, economic, political and even psychological factors as never before. It is a two-fold problem of adapting the machinery of government to

the work and insuring the support of the people while the war is being waged.

When the organization of government is considered primarily from the standpoint of the conduct of a war, the deleterious effects of the separation of powers are seen at once and at their worst. In fact, the primary necessity is that of extreme centralization, for there is no field of administration in which this is so important as in that of the military, and in everything connected with it. And this feature of concentration of power and authority must extend from the purely military to that of the political, no matter what the temporary effect upon the functions of the government may be. Speed, certainty and force are the invariable factors of success, and their use must be without hesitation and without restraint.

Although our Constitution may be built upon the false theory of separation of powers yet there are provisions that allow for a centralization in crises such as war. We then may have the necessary concentration of authority in order to be both efficient and successful. This opportunity is summed up in the so-called "war powers" of the Constitution. But the important problem of potential national security at all times should not be overlooked, whether the United States ever enters a war, or not. The assurance of this security lies first of all upon the initiative of the legislative department and it depends upon the proper determination of a long and consistent policy. If that department performs its duty in this respect, the decision with regard to details should be left in the hands of the executive. But the matter un-

der present discussion is that of the immediate necessities of the government during the actual course of a war, long after the proper preparation and measures to provide national security have been taken and, perhaps, during the course of many past years. The so-called "war powers" in the Constitution are contained in Article I, section 8, paragraphs 11 to 16 inclusive, and paragraph 18; also in Article II, section 2, paragraph 1.

Discussing them seriatim, it will be found that paragraph 11 gives Congress the power "to declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water." Professor Edward S. Corwin of Princeton University, from whom I now am largely quoting,<sup>1</sup> points to the fact that even before the Constitution was adopted the American people had asserted their right to wage war as an unit. It has been suggested by some authorities that the national government does not get from the Constitution its power to wage war but possesses it as an inheritance, and all that the Constitution does is simply to provide for the exercise of this already-existing power. But from whatever source it ultimately may be derived, the authority of the national government to wage war, and of course to wage it successfully, is one of vast scope

<sup>1</sup> The discussion of the actual provisions of the Constitution, contained in this and the following paragraphs, in great part is quoted or paraphrased from Professor Corwin's scholarly and handy little volume entitled, *The Constitution and What It Means Today*. I desire herewith to acknowledge my indebtedness to it. I also have drawn upon *The Constitutional Law of the United States*, by W. W. Willoughby Vol. II, Chapter LXI.

and is limited only by the resources of the nation and the restraints of moral considerations. Furthermore, this power is exclusively in the hands of the national government, for the states have no power individually to wage war, unless under actual invasion or in such imminent danger as will not admit of delay.<sup>2</sup>

The power of Congress to declare war is the same power that in 1776 belonged to the king of Great Britain. It was felt by the members of the convention of 1787 that in a democratic government this authority should be placed in the hands of the representatives of the people. However, since that time, the president acting alone has in some cases been recognized as having that power. If a nation begins aggressive war upon the United States, the president may take such action as the situation demands, subject to the provisions of the Constitution and the laws already passed in conformity therewith. And the president, on account of his control over foreign affairs, easily may cause a situation to arise which may lead immediately and directly to war. Of course the final decision in a measure is still placed upon Congress, which holds the power and controls the finances and, so far as the specific situation is concerned, is entirely free to decide whether or not it will support the action of the president. Since the practice of privateering is generally considered beyond the pale of international law, letters of marque and reprisal are now happily out of date.

Paragraph 12 gives Congress the power "to raise and

<sup>2</sup> Article I, section 10, paragraph 3.

support armies, but no appropriation of money to that use shall be for a longer term than two years." Paragraph 13 gives the authority "to provide and maintain a navy." Congress may raise an army or man a navy by volunteers or by means of conscription, and the Supreme Court has decided that compulsory military service does not violate the provisions of the Thirteenth Amendment, for liability to it is a responsibility of citizenship. And, in addition to the measures for raising and supporting armed forces, Congress may prescribe the purposes for which they may be used. On the other hand, in so far as the president does not exceed his constitutional and legal authority, he may use these forces as may seem best in his discretion, in order to enforce the laws or protect the rights of American citizens.

Paragraph 14 gives the power "to make rules for the government and regulation of the land and naval forces" and it is by virtue of this authority that we have the "Articles of War" and "Articles of Government for Naval and Military Discipline." Paragraph 15 provides for "calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions." Paragraph 16 gives power "to provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress."

As a matter of fact the militia was looked upon for

many years as a state affair and was at times very inefficient. According to the "National Defense Act" of June 3, 1916, the militia is defined as consisting of "all able-bodied male citizens of the United States" and all other able-bodied males who have declared their intention to become citizens, who shall be more than eighteen years of age and, with a few exceptions, not more than forty-five years of age, and that they shall be divided into three classes,—the National Guard, the Naval Militia, and the Unorganized Militia. The same act provides further for the national guard and recognizes it as a constituent part of the militia of the United States, and also provides for its being drafted into the military service when Congress shall have authorized the use of the armed land forces of the United States for any purpose requiring the use of troops in excess of those of the "regular army." This rests upon the principle that the right of the states to maintain a militia is recognized by the national government in any emergency.

It may be said, in conclusion, that the celebrated "elastic clause" of the Constitution (Article I, section 8, paragraph 18) gives Congress authority "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof." Professor Corwin quotes in exposition of this clause the celebrated dictum of Chief Justice Marshall in the case of *McCulloch versus Maryland*:— "Let the end



be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are constitutional.”

These are the powers of Congress. Those of the president are found in Article II, section 2, paragraph 1, which provides that— “The President shall be Commander-in-Chief of the Army and Navy of the United States, and of the militia of the several States when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in case of impeachment.”

Of course, as Professor Corwin points out, the power that the president has as commander-in-chief “is primarily that of military command in war time, and is no greater because it is vested in him than if it were vested in any other person.” Since, however, it is vested in him, it cannot be transferred to any other person by Congress. Finally, he possesses absolute authority against the persons and property of enemies of the United States encountered in the theater of operations. It was upon this theory that Lincoln issued his emancipation proclamation. It should be noted that by virtue of the last clause of section 3 of the same article of the Constitution, it is provided also that the president

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“shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.”

Thus it is seen that, from the standpoint of government, we find the mechanism for the centralization of government and necessary for the conduct of war provided both by the war powers granted to Congress and by the powers of the president as commander-in-chief of the military forces of the nation. But after all, Congress merely should map out great questions and then leave their details to the president or his assistants in the executive departments,—and that means the war department or the army itself. Of course it is perfectly possible for Congress to interfere. We have the classic illustration of this in the celebrated “Committee upon the Conduct of the War” which was in existence during the days of the Civil War and which probably did more damage to the Union cause than any other one thing during the whole time of the war,—investigating everything and everybody and accomplishing almost nothing constructive. It was nothing but “politics,” and often and for political reasons a victorious general seemed more subject to investigation, or even censure, than one who had been defeated. Politics thus was rampant, and much to the detriment of the army.

The other or second part of the problem of the American government and the conduct of a war lies on the political side, and consists in the matter of securing the active and consistent support of the people through an intelligent and energetic public opinion. History shows

many instances of a government wrecked or overthrown, and a war lost, because the people of a country have become indifferent or lost confidence in the officials in whose hands were placed both the political and military direction of affairs. Russia after the revolution of March 1917, and Germany in the days immediately preceding the armistice of November 1918, are recent illustrations of this statement.

There is no question that President Wilson had the support of the American people during the World War to an extent never before approached in our history. This was given him because he was president and not, as he and certain of his emotional followers seemed to think, for any other reason. It is indeed a great cause for confidence in the ultimate judgment and patriotism of the people of this country that they thus arose to the occasion and by their united support made possible the early and happy ending of the conflict. It is my own opinion that had Abraham Lincoln, in the north alone, had one-third the support that was given Wilson throughout the entire nation, the Civil War probably would have ended two years sooner. The excellent work done by organized agencies, both official and private, and extending from Red Cross and Y. M. C. A. to Liberty Loan and other campaigns, had much to do with arousing our people, although the official propaganda was inclined too much to glorify certain individuals and also showed a decided tendency toward partizan propaganda.

But it was in relation to public opinion that President

Wilson took the greatest risks and easily could have wrecked his own government and the cause of the United States. This was by continuing in office his Secretary of War and Secretary of the Navy. It is not a question of the ability or efficiency of these men for, aside from these personal considerations, there is no doubt that they did not have the confidence of the country. For this reason alone President Wilson, immediately upon our declaration of war against Germany, should have replaced them by individuals in whom the country had confidence and upon whose judgment our citizens felt they could rely. Fortunately for him and for the Allied cause, the armies of this country never suffered a serious reverse, but by the assistance of the Allies the conflict was ended happily before the great moral and economic strain was felt down among the ranks of our people. Had misfortune fallen upon our arms either on land or sea, or the war lasted any great length of time, with the resultant popular weariness and sorrow due to increased casualty lists, a popular uprising would have occurred against Mr. Baker and Mr. Daniels, whether they deserved it or not, and one that would veritably have wrecked the whole administration. This kind of danger is an easily-read lesson from history, and it was inexcusably foolhardy for President Wilson to disregard it.

In contrast to this, some of the very cleverest political work of the war period was done by Mr. Herbert Hoover as food administrator, and he was not ranked

as a "practical" politician. He had immense authority, but he seldom used it. Mr. Hoover followed the sound plan of appealing to the people to co-operate, and they did so. Some of the people, of course, did not have intelligence enough to do their part. When the order was given by the food administration that a certain amount of grain "substitutes" must be bought with each purchase of wheat flour, ignorant foreign inhabitants bought it and threw the substitutes into the gutter. This merely meant that they paid several times too much for wheat flour. There were other like failures in various parts of the country and the directions of the administrator were not always carried out loyally, but after all it is remarkable how far the real Americans of all classes, and both native and foreign-born, did go in their support of the food administration. In other words, Mr. Hoover accomplished this by direct appeal to the people. He thus acted according to the fundamental basis of a democracy as primarily a government by public opinion, this same public opinion being the outcome of a co-operation which results from the inward impulse of the individual citizen. And this impulse must come from a sense of responsibility. It was to this sense, or conscientious conviction, that Mr Hoover appealed.

Another good illustration of politics in the best sense was the placing of the selection of men to fill the draft quotas for the army in the hands of local draft boards composed of civilians in whom the people had confidence. Whether or not this wise policy was the work

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of General Enoch H. Crowder or of some other person, it was a sign of real statesmanship and is worthy to rank with that of Mr. Hoover.

In connection with military conscription comes another problem that must be faced and solved whenever the next great war comes upon this country, and that is the problem of drafting labor. Five years ago, a man was exempted from military service to work in a coal mine, and he made more actual cash in a day than the soldier, who was risking his life and health, made in several weeks. Of course there was dissatisfaction, and the present unfortunate agitation for a soldiers' bonus is in large part the logical and natural result of this feeling, for there was as much profiteering among labor as among capital. But if labor is drafted and put to work in the mines, on the farms, or in factories, the government must fix the wage in the same way that it fixes the wage of the soldier. When the wage is fixed, then prices must be fixed and also there must be absolute publicity in order to get at the cost of production. This will cause the people at large to feel that the prices are fixed at a fair amount. Otherwise, they doubtless will say that the government is drafting men to serve the profiteers. But publicity will mean the publication of business secrets and this will arouse the natural opposition of many business men who have struggled for years to build up a business and against great competition. It is a present cause for patriotic pride to be able to say that the charge never has been brought by responsible people against our officials and ex-officials that

they used the knowledge of business secrets gained from their governmental service during the war in order to take advantage of business rivals in time of peace. This is in sharp contrast to charges prevalent in certain European countries at the present time.

The reorganization and centralization of commercial and industrial machinery in conducting any war mean the setting aside of the ordinary "laws" of economics, such as those of supply and demand, and inevitably these latter are going to come back into full effect. It is like damming up water. And the longer it is dammed up, and the higher it rises, the greater will be the flood at the end. Furthermore, there is only a certain point to which one can go in this process, and time has much to do with its determination. And yet this should be undertaken, no matter what the final cost, for it may be a question of the continued existence of the country as a nation. We did this in waging the recent war and our present difficulties with coal-mining, the railroads, shipping, and numerous other economic interests are directly due in large part to governmental action during the war, which was unjustifiable from an economic or political standpoint, but from a military point of view was not only justifiable but absolutely correct. Of course much opportunity for unfair profit was given to the selfish and the partizan individuals with ability, but little or no patriotism, but unfortunately this, and other kinds of evil, seem to be with us in times of war just as in a period of peace.

Probably the element of lapse of time comes in as

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strongly in the economic field as in that of the military and political, which were stressed above. The whole problem would seem to be that of preparing plans beforehand, so that they can be put into effect immediately upon a declaration of war, and then carried through with energy and efficiency to bring the conflict to a successful conclusion while public opinion is active and favorable and before the inevitable reaction comes. A democracy may have even more difficulty in maintaining itself during a long drawn out conflict than an autocracy, where the people are schooled to unquestionable obedience. But when a democratic people once are aroused and their convictions enlisted in a cause, they are almost invincible, provided the state of exalted public opinion can be maintained.

President Frank J. Goodnow, of Johns Hopkins University, states that from the standpoint of administrative control there are three interests to be guarded.<sup>3</sup> These are governmental efficiency, the preservation of individual rights and social well-being. In time of war the first of these of necessity becomes paramount, but only temporarily and for the direct purpose of winning the war. And the object of all wars, if they be just ones, in the last analysis is to gain the other two interests,—those of the preservation of individual rights and of social well-being. Furthermore, in order to prevent individuals from abusing their power, it is necessary to subject them to some sort of control, and this control

<sup>3</sup> *Principles of the Administrative Law of the United States*, pp. 370-2.



usually is exercised in the United States in several ways,—by subjecting them to the approval or direction of a legislative authority, by judicial control, and by “requiring the necessity of the approval of some higher administrative authority before the ordinance shall go into effect.”<sup>4</sup> In other words, from the administrative standpoint there must be a certain centralization of authority and responsibility through various officials up to the general in command or to the “general staff,” then to the war department and to the president, with a final legal and political check at the hands of Congress and the federal courts.

Efficiency requires the use of more and more experts of all kinds in the administration of government. Some students of politics today are saying that the intricacies of governmental administration are increasing at such a pace that already they have outgrown the capacity of the people to understand them. This is probably true, but it does not make correct their conclusion that, as a consequence, democratic government is becoming outgrown and is a failure. The people are not especially capable from an intellectual standpoint, but they generally are capable of choosing a personality fairly well, especially one endowed with strength and a gift for leadership. Therefore the people should choose a few individuals by election and then these latter should choose the experts and be held responsible for the results of the experts' work. In other words, a prime necessity in times both of war and peace is the “short ballot,” by

<sup>4</sup> *Ibid.*, pp. 328-9.

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which the people themselves choose directly those whose work is political, or policy forming. These same officials then can choose the experts, or those whose work is administrative, and primarily occupied with expert knowledge or detail. By this simple means it should prove possible for governmental efficiency to advance step by step with the needs of the public welfare.

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